Rosengarten, Clark

From: Rogers, Laura on behalf of GetSMART
Monday, August 06, 2007 10:35 AM
Rosengarten, Clark
Subject: FW: Michigan Rule Comments

Attachments: Rule comments.doc

Rule comments.doc
(26 KB)

-----Original Message-----
From: Diane Sherman [mailto:ShermaDL@michigan.gov]
Sent: Thursday, August 02, 2007 5:52 PM
To: GetSMART
Cc: Katie Bower; Karen Johnson; Charlotte Kilvington; Edward Pitts
Subject: Michigan Rule Comments

See attached.

Diane Sherman
Criminal Justice Information Center
(517) 322-5511

UD-40 (2/90)
MEMORANDUM

STATE OF MICHIGAN

DEPARTMENT OF STATE POLICE

Comments on SORNA Proposed Guidelines

1. Must a search function on the public website include a **radius** search as long as we have a search option by zip code, county, city, offender, and school?

2. How do we address HIPPA issues on the public website with offenders who are in treatment facilities?

3. Do we have to honor the "clean records" provision for other states if Michigan decides not to implement the "clean records' provision clause?

4. The catch-all provision wording for covered offenses was changed and now focuses on the "conduct" of the sex offender rather than the sexual offense that predicated arrest. Does this now include the registration of non-covered offenses based on the court documents and the pre-sentence investigation report?

5. Many states do not collect electronic palm prints. The required link to palm prints should be required only for electronic palm prints.

6. More detail is needed regarding duration begin dates since each state is different, or is the final decision to be left up to the states? Many states are very concerned about this as it would affect registration requirements if the offender moved substantially from state to state.

7. Is Michigan required to enact legislation for civil commitment of dangerous sex offenders under the Jimmy Ryce Civil Commitment Act or can the state choose to forgo such an option?

8. Must states require the retroactive submission of DNA samples for sex offenders who have not yet provided such if the DNA requirement standard for the state was enacted January 1, 2000?

9. While the collection of Internet names sounds like a good idea, in reality, because they are self reported, are meaningless.

10. The 3 day change of address requirement is overly restrictive, especially for those who typically do not have identification or the funds to obtain identification. We recommend that it be changed to 5 days. The SORNA should make it easier to register not harder.

11. Retroactivity puts a work load burden on states. Much research will be needed on old laws to determine whether they apply to SOR registration.

FEEDBACK ON PROPOSED GUIDELINES

Submitted by:

Cpl. Jeff Shimkus
Allen County Sheriff's Department
Sex Offender Registration and Notification Team
101 E. Superior St Room B-25
Fort Wayne, In 46802
(260) 449-8611 office
(260) 449-7985 fax

After reviewing the proposed guidelines for Adam Walsh I offer the following thoughts:

Section IV (A) Juveniles **Page 17**

This section raises some concern in the area of juvenile adjudications. Currently under Indiana law juveniles are required to register as sex offenders if the juvenile is over the age of 14 and is found, by a court, likely to re-offend based on clear and convincing evidence. The fact that Adam Walsh will require registration of juveniles simply based the age of the offender and a crime comparable to aggravated sexual abuse is in stark contrast to our state law. Currently Indiana law protects the community from juvenile sex offenders deemed likely to re-offend by requiring these offenders to register for at least10 years, and the law also protects the juvenile offender from the mistakes of youth

Based on the definition in 18 U.S.C. 2241, engaging in a sexual act with a child under the age of 12 constitutes "aggravated sexual abuse". Therefore, a 14 or 15 year old offender who "engages in a sexual act" with an 11 year old could be guilty of "aggravated sexual abuse," and required to register for 25 years as a tier II offender. In some situations an offender like this should be required to register, however by not allowing the court to review the totality of the circumstances, we could label a 14 year old child as a sex offender based on an exploratory sexual experience with another child only 3 years junior.

The other issue is the confidentiality of juvenile records themselves; for instance a juvenile is adjudicated at the age of 15 for an offense similar to aggravated sexual abuse in 1997. He is not required to register at that time based on Indiana law. 20 years later he is arrested for drunk driving and therefore re-enters the criminal justice system. Based on Adam Walsh, he is a tier II offender and must register for 5 more years. This person has not committed any other sex offense, but now the juvenile record which had been sealed for 20 years is now open to the public and this person labeled as a sex offender.

Section IV (D) Specified Offenses against Minors Pages 19-22

There are several issues with the "specified offense against a minor". Most notable are the charges of kidnapping and false imprisonment. In Indiana these charges correspond to kidnapping and criminal confinement.

Under Adam Walsh and Wetterling, a jurisdiction cannot exempt a person convicted of these offenses from the requirement to register as a sex offender. Adam Walsh has given jurisdictions the discretion to exempt parents and guardians from the registry if they were convicted of kidnapping or criminal confinement.

At first glance excluding parents and or guardians in these situations makes sense, and many jurisdictions were pleased with this new change in Adam Walsh because persons convicted of theses offenses as a result of custody disputes could be removed from the registry. In these situations there was no sexual intent and the "victims" involved were in no danger of a sexual assault. Therefore there is no need to label the offender as a "sex offender".

However, automatically protecting an offender from the requirement to register based solely on his or her relationship to the victim is simply bad law. Cases involving parents or guardians may or may not be sexual in nature. In some of these cases there may have been a clear intent to commit a sexual assault but the victim was found or the perpetrator was unable to commit the assault. In these situations the sentencing court should be given the discretion to require these offenders to register as sex offenders based on a conviction for kidnapping or criminal confinement.

The issue of plea agreements is another concern. For instance, a parent or guardian charged with child molesting and criminal confinement would eagerly sign a plea agreement that dismissed the molesting charge for a guilty plea on the confinement charge. Armed with the knowledge that the offender's relationship to the victim will exclude him or her from the sex offender registry, offenders would be eager to plead guilty to kidnapping or criminal confinement so that they could live undetected in the community.

At the other end of the spectrum are cases involving domestic disputes involving persons who are not parents or guardians of the victim. Cases involving burglaries, and even suicidal subjects involved in barricaded subject situations continue to result in persons being required to register as sex offenders. These cases were not sexual nature. However because the offender was convicted of kidnapping or criminal confinement against a minor, this offender is a sex offender by law and in most cases is required to register for life based on the age of the victim and / or the element of force used during the confinement.

Indiana attempted to address this issue in 2006 by changing the language of the law. This issue became moot when it was learned that under Adam Walsh, Indiana could only exempt persons convicted of a "specified offense against a minor" if the person was a parent or guardian. Since Indiana could not address the complete issue of the kidnapping/criminal confinement dilemma, legislators compromised and simply incorporated the poor wording of Adam Walsh into Indiana law.

The original intent was to require ANY person convicted of kidnapping or criminal confinement against a victim who was < 18 to register as a sex offender; **unless the sentencing court finds by clear and convincing evidence that the kidnapping was not for sexual purposes.**

If Indiana and the federal government adopt this or similar language, the following issues could be remedied:

1. Offenders currently on the registry for these charges would be able to petition the court to look at the totality of the circumstances surrounding their convictions. If the court found no sexual intent, these offenders could be removed from the sex offender registry so that they would not be falsely labeled as "sex offenders" for the rest of their lives.

2. By stating that the court must find "by clear and convincing evidence" that the offense was not committed for sexual purposes, we will place the burden on the defendant to prove his or her intent. This will ensure that the community is protected from offenders who kidnap or confine children for questionable or unknown reasons. As it stands now, the law allows us to err on the side of caution and require registration of the offender based simply on a conviction for kidnapping or criminally confining a minor.

3. Parents and guardians will not be automatically exempted from the requirement to register based solely on their relationship to the victim.

Section VI Required Information; internet identifiers and addresses Page 29

While having this type of information on registered sex offenders would undoubtedly assist in investigations, this will be nearly impossible to effectively enforce. The internet provides any person the ability become someone other than themselves. Therefore sex offenders often use the internet to find new victims. Law enforcement uses this same aspect of anonymity to successfully locate and prosecute pedophiles by pretending to be either children or other pedophiles hoping to trade pornography.

Offenders could easily provide registry officials with legitimate email addresses to comply with the mandate and create new undetected identifiers under a separate identity. Offenders would not use the disclosed identities for illegal purposes, knowing that law

enforcement would monitor those addresses. An offender could easily create an infinite number of pseudo-identities to use for illegal activities.

I agree that local law enforcement should be encouraged to collect this information for intelligence purposes. However I do not believe that local jurisdictions should be mandated to collect information that would be compromised from the start because of the offender's knowledge that the internet identifiers will be monitored.

Section VII Mandatory Public Information **Pages 38 – 39**

I do not believe offender vehicle information and license plate should be placed on the public registry. I believe strongly that information on all vehicles that an offender owns or operates on a regular basis should be required at registration and entered into the database. However I believe this information should be for law enforcement only.

I am afraid that supplying the public with vehicle information could have unintended consequences such as creating panic every time a "green minivan" drives by a playground (because the sex offender on Main Street drives a green minivan...)

I also fear that by providing the license plate information we could actually taint eyewitness accounts by providing them with an entire license plate. Most witnesses would eagerly identify an offender's vehicle as suspect in a missing child case. That fact that they would provide an accurate plate number to police would make the testimony appear to be very credible. However based on the fact that the information was posted on the internet, the "witness" could provide an accurate and seemingly credible description of an offender's vehicle from the comfort of their own home, miles from the alleged abduction site.

Section VII Disclosure and sharing of information **Pages 41-42**

I am somewhat confused on this section dealing with the dissemination of offender information to other law enforcement agencies and supervision agencies. If I understand correctly NSOR is the NCIC sex offender file. If this is correct the file will have to be modified to accept employment and school information. Currently we enter offender address, vehicles, descriptors, and conviction information into NCIC. However there are no fields for employment or school addresses.

The other issue to be addressed is ownership of the NCIC record. Take for instance an offender who resides in Allen County Indiana and works in Huntington County. There is an NCIC record showing the offender's registered home address with Allen County. In order for Huntington County to add the employer address to NCIC, they must add a new record. If the offender attends school in a third jurisdiction we must add another record. NCIC would be become cluttered with multiple records on each offender.

This currently happens now to some extent with offenders who move from one state to another. For example an offender registers with State A and is required to register for life. The offender moves to State B where he is required to register for 10 years.

The police officer on the street stops this offender and receives two NCIC hits, each with different information. In some cases the registered addresses are the same and current. In other cases the registered addresses differ because State A has not updated its record with State B's more recent information.

The second issue with dissemination concerns exactly how we will notify other agencies in our jurisdiction. Does this have to be an active notification i.e. "John Smith moved from 123 Main Street to 123 Smith Street"? Or will granting "read only access" to our database suffice?

Section VIII Registration locations Page 45

Requiring registration in the county of conviction makes sense in new cases; however it will be very problematic to require offenders already on the registry, or offenders with old convictions that are newly discovered by registration officials, to return to the county of conviction and register.

We must be able to "grandfather" current registered offenders, as well as those offenders whose convictions pre-date the state's adoption of Adam Walsh. These offenders should be required to register in their county of residence as well as employment and schooling locations. The other issue we must address is the issue of requiring "conviction" jurisdictions to supply the court documents free of charge to the registering agency. There are still jurisdictions that will charge law enforcement agencies a fee for those documents required to properly register and classify a sex offender.

Section IX Initial registration Page 48

Are local jurisdictions required to inform an offender of his duties under Adam Walsh in addition to informing the offender or his duties under State law? If this is the case then the federal government must provide each jurisdiction with a standardized form outlining the offender duties under Adam Walsh.

Retroactive cases **Page 50-51**

This area will be extremely problematic when dealing with offenders who "slip through the cracks". For example an offender convicted of rape in 1975 is arrested in 2007 for robbery. Many times local jurisdictions do not learn of the 1975 rape conviction because it was never entered into the offender's NCIC criminal history. How can a jurisdiction implement and comply with this section of Adam Walsh if the rape occurred in California and the robbery in Ohio? How can California enter the offender's information into NSOR showing the offender as a registered offender without first notifying the offender of his requirement to register? How will Ohio learn of the rape conviction if it does not appear in the criminal history?

"No Shows" **Page 51**

This section deals with situations where federal authorities notify a local jurisdiction that an offender is being released to their jurisdiction but the offender fails to appear in person and register. As stated in this section the local jurisdiction must proceed as discussed in Part XIII to file fail to register charges.

This will be problematic in some cases where the local jurisdiction cannot show that the offender is actually in their jurisdiction or if he ever was. How can Indiana file for a warrant for failure to register when we cannot prove that the offender ever actually arrived and stayed in Indiana for more than the allotted three days?

We must add clear language to Adam Walsh and each State's law to clearly state that if an offender changes his plans and does not move to his stated address, the offender must notify the agency with whom his is currently registered with and provide them with a new intended address. For example, an offender is incarcerated in Virginia and prior to his release he registers and states he's moving to Indiana. Virginia notifies Indiana and we wait for the offender to arrive but he never arrives. After being released from Virginia the offender decided to travel to Maine and live with a relative.

In this case how can Indiana file for any warrant when no crime occurred in Indiana? Maine will have jurisdiction, provided they become aware of the offender's presence and they can how he has resided in Maine for more than three days, but Virginia should be responsible for seeking the warrant. However they will not be able to prosecute unless there is clear language stating that it is a crime for an offender to change his mind and not move to the stated destination.

Section X Keeping registration current **Page 54**

I expressed my concern with this section earlier in this document; specifically how are local jurisdictions to be expected to notify ALL law enforcement and supervision agencies within the jurisdiction each time n offender moves? Will access to the database

suffice or will the registering agency be required to actively notify each affected agency on each change in employment, residence, vehicle, or schooling information. Registering agencies will be overwhelmed if this is not automated.

Section XIII Enforcement **Page** 64

This area has several problems:

1. Establishing jurisdiction - As I stated earlier, jurisdiction can be problematic when offenders change their travel or residency plans and fail to notify the agency with whom they are currently registered. Technically the offender is compliant when he notifies the agency that he is relocating to destination X.

2. Extradition limits and the costs associated with transporting offenders back to the area where a "fail to register" offense occurred must be addressed. Many jurisdictions will only extradite from surrounding states or within a specified mile radius. This has resulted in areas of the country where offenders can live with active warrants knowing that their home state will not extradite them from such a far distance.

3. Many jurisdictions across the country have the attitude that once an offender moves to another state, he is the receiving State's problem; they do not want to bring the offender back to face failure to register charges because by not extraditing him, they have one less sex offender to worry about. At the same time, the new jurisdiction wants to send the offender back to his home state so they don't have a new offender to worry about.

Some of the above issues will be resolved by charging offenders federally if they cross state lines; however there are still issues with federal prosecutors having to prove that the inter-state travel occurred after the passage of Adam Walsh.

I believe all jurisdictions should be encouraged to extradite offenders across the country. However if this were to be done, there must be funding available to local jurisdictions to cover the costs of nationwide extradition.

In summary, there are many issues that need to be addressed and standardized prior to the full adoption of Adam Walsh by all local jurisdictions.

Jeff Shimkus
Allen County Sheriff's Dept.

Rosengarten, Clark

From: Rogers, Laura on behalf of GetSMART
Sent: Monday, August 06, 2007 10:44 AM
To: Rosengarten, Clark
Subject: FW: Docket No. OAG 121
Attachments: AdamWalsh-comments.doc

From: Beaty, Louis [mailto:Louis.Beaty@txdps.state.tx.us]
Sent: Wednesday, August 01, 2007 3:50 PM
To: GetSMART
Cc: Gavin, David; Lesko, Mike; Castilleja, Vincent; Merchant, Scott; Batten, Randy
Subject: Docket No. OAG 121

Docket No. OAG 121

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Comments on Guidelines for implementing the programs of the Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) Office.

submitted by the Texas Department of Public Safety

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PALM COLLECTION

1) Standards - Jurisdictions using digitized images to fulfill the palm requirements should be required to capture and store the palms utilizing national standards.

a) Image Capture - The FBI approves scanners in compliance with the image quality standard (IQS) as promulgated in Appendix "F" of the Electronic Biometric Transmission Specification v 8 (EBTS).
A list of approved scanners may be found at http://www.fbi.gov/hq/cjisd/iafis/cert.htm

b) Storage and Transmission - The storage of the palms should be consistent with the ANSI/NIST- ITL 1-2007 standard "Data Format for the Interchange of Fingerprint, Facial & Other Biometric Information".
The FBI's transmission format (EBTS 8.0) is also based upon the ANSI/NIST- ITL 1-2007 standard.

c) Best practices - No best practices are available to guide the user in determining what parts of the palm constitute a "palm" for Walsh purposes. The FBI APB asked the IAFIS Interface Evaluation Task Force (IIETF) to develop these best practices for the criminal justice community. The best practices will probably require a palm transmission to contain, at the very least, a full left and right palm (captured in top and bottom palm halves or a single full palm capture), and left and right writer's palms.

2) Substantial Compliance - There are many factors involved with the capture, transmission and storage of palm images. The guidelines should reflect these factors by allowing for substantial compliance if a jurisdiction can demonstrate a realistic plan for implementation of the palm requirement in a useful manner. Jurisdictions should be able to provide a date for when they would become fully compliant with the palm requirement.

Some of the gates for palm compliance are:

a) Updating capture equipment - All livescan devices do not have palm capabilities. To capture palms, a larger platen is required than that used for finger capture. Many jurisdictions may be required to retro-fit current devices with a palm attachment. Depending on the jurisdiction, this could be a significant project. (For instance, Texas has 254 counties with over 1,100 law enforcement agencies registering sex offenders).

b) Adding palms to transmissions - Software associated with livescans must be modified to include the palm prints.

c) Telecommunications infrastructure – Many jurisdictions must upgrade their telecommunications infrastructure to accommodate the large file size associated with palm prints.

d) Receipt of the images - The receiving entity may or may not have the ability to accept and process the palm transmissions. At the very least, AFIS software must be able to accommodate the images and spin them to an electronic archive if unable to process the palms themselves.

e) Storage of palms - Palms are not generally useful unless they are resident in an AFIS. Not all jurisdictions have palm AFIS devices. The FBI does not have a palm AFIS, but will implement one in conjunction with the Next Generation Identification (NGI) initiative. Currently, the FBI is capturing and storing palm images from only three states (Texas, Oklahoma and Kansas). As a Quick Win for NGI, the FBI will start to pull palms for requesting states beginning in December. After NGI implementation, the FBI will be able to go to their archive and harvest the previously submitted palms, but there is no plan to allow states automated access to the palms submitted prior to NGI implementation.

The goal is to create flexible guidelines to allow jurisdictions to capture and store the palms in a usable manner. This cannot happen overnight, and rushing to enter data just to be compliant could have the unintended consequence of making the data unusable.

JUVENILES

The Texas legislature and other jurisdictions are hesitant to pass legislation imposing a lifetime registration for juvenile offenders. A possible compromise would allow for lifetime registration in cases of use of extreme force on the victim and cases involving a very young victim.

E-MAIL ADDRESSES

The capture of e-mail addresses creates a significant resource for law enforcement. The Texas Registration Program anticipates the capture of email addresses in the registry, but will not publish the addresses. The public will be allowed to inquire if a particular e-mail address is associated with a registrant and the relevant registration information will then be provided to the inquirer.

SOCIAL NETWORKING SITES

Given the prevalence of social networking internet sites such as MySpace.com and Facebook.com, the guidelines should require these ID's to be included in the state's registry.

VEHICLE INFORMATION

Vehicle information, specifically, the inclusion of place or places where the registrant's vehicle or vehicles are habitually parked, docked, or otherwise kept could of great benefit to criminal justice agencies. However, entering this type of information in the registry will be a burdensome process considering the limited resources of local law enforcement to verify the reported information. In addition, without guidelines on how to classify the collected information for possible automated searches or investigations, the benefit to law enforcement is greatly reduced.

TEMPORARY LODGING INFORMATION

The guidelines require jurisdictions to capture information pertaining to any place the offender stays for seven or more days, including identifying the place and the time period of the stay. The purpose of the registration program is to provide notification of the places where the offender frequents, but the guidelines do not designate whether the stay must be seven or more consecutive days or seven or more days within a specific time period, such as one month, three months or a year.

Rosengarten, Clark

From: Rogers, Laura
Sent: Wednesday, August 01, 2007 8:36 PM
Rosengarten, Clark
Subject: Fw: ICJC "Business" Response & Comments to SORNA Guidelines atSMART Office

Attachments: ICJC Chair Signed SORNA Guidelines Comment Letter 7-31-07.doc

More comments.

Can you print a copy of all of these that I am forwarding. Thanks

----- Original Message -----
From: Tony Wilkerson <twilkers@idoc.idaho.gov>
To: Rogers, Laura
Cc: stephen.bywater@ag.idaho.gov <stephen.bywater@ag.idaho.gov>; Brent Reinke <breinke@idoc.idaho.gov>; Rhonda.Morton@isp.idaho.gov <Rhonda.Morton@isp.idaho.gov>
Sent: Tue Jul 31 15:36:15 2007
Subject: ICJC "Business" Response & Comments to SORNA Guidelines atSMART Office

ICJC Chair Signed SORNA Guidel...

Laura L. Rogers
Director, SMART Office
Office of Justice Programs,
United States Department of Justice
7th Street N.W.
ington, DC 20531

Reference: OAG Docket No. 121 - Comments to SORNA Guidelines.

Ms. Rogers,

As an attachment to this email, please find the Response & Comments letter to the SORNA Guidelines from Chairman Brent D. Reinke and Idaho Criminal Justice Commission, State of Idaho. For your convenience this letter is also being sent, to your office via fax number (202) 514-7805, as well as an or originally signed hard copy of your Idaho file.

Thank you for your continued assistance and service.

Sincere thanks,
Tony

Tony L. Wilkerson, Project Manager
Idaho Criminal Justice Commission
1299 N Orchard Street, Suite 110
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Office: (208) 658-2071
Email: twilkers@idoc.idaho.gov

IDAHO CRIMINAL JUSTICE COMMISSION

"Collaborating for a Safer Idaho"
Established 2005

C.L. "BUTCH" OTTER
Governor

July 31, 2007

Laura L. Rogers
Director, SMART Office
Office of Justice Programs,
United States Department of Justice
810 7th Street NW.
Washington, DC 20531

Reference: OAG Docket No. 121 – Comments to SORNA Guidelines

Dear Ms. Rogers:

I am writing on behalf of the Idaho Criminal Justice Commission with regard to the National Guidelines for Sex Offender Registration and Notification issued on May 30, 2007. The Idaho Criminal Justice Commission is a state-wide commission established in Idaho by executive order with representatives from a broad cross-section of agencies and interests in the criminal justice system of Idaho.

One of the original directives to the Commission was to review the current laws and nationwide "best practices" with regard to sex offender management and regulation and provide guidance and direction to the Governor and the Legislature on this issue. The Commission has devoted a significant amount of time in the past years to a study of this issue and in reviewing the various approaches, both legislative and correctional, that are being implemented around the country.

At the Commission's meeting on July 27, 2007, we reviewed the proposed comments to the guidelines prepared by the sub-committee we have established with regard to SORNA implementation and compliance. Our review of the comments led to considerable discussion among the members of the Commission and consensus on the comments included herein regarding the Guidelines that we want to convey to you.

Comment (1): Comment on proposed guideline regarding scope of retroactive application. The state is concerned about the breadth of the duties of the state regarding the scope of retroactive application of the guidelines. More specifically, requiring the state to register all individuals who have been convicted of a sex offense who are not currently incarcerated or otherwise under supervision imposes an onerous and unworkable burden on the state and its limited resources.

Comment (2): Comment on proposed guideline regarding definition of "residence." While the state appreciates the need to know all locations where an offender resides, the breadth of information required for offenders who are homeless or transient poses some difficulties and appears to impose a greater burden on tracking a homeless or transient offender's whereabouts than it imposes upon an offender who has a more permanent residence. Most notably, the guidelines require tracking where a homeless or transient offender "frequents," a requirement that is not applicable to other offenders. Trying to track and verify this information, much less prosecute an offender for failing to comply with the registration requirements pertaining to such will be tremendously difficult. It seems that simply requiring a homeless or transient offender to provide the location(s) where he or she habitually lives, and eliminating the requirement that he or she report places he or she "frequents", should be sufficient.

Comment (3): Comment on failure to recognize the existence of a separate juvenile registry as substantially complying with SORNA. Idaho has serious concerns about the approaches taken in the federal law and guidelines relating to registration requirements for juvenile sex offenders. As you know, Idaho Law provides for separate registries for adult and juvenile offenders. It also provides a mechanism for the transfer of a juvenile registrant to the adult system in appropriate cases when the juvenile reaches the age of majority. SORNA mentions only one registry and requires that juvenile sex offenders 14 years of age and older convicted of "Tier III" offenses be included on that registry. The Guidelines do not explicitly recognize that a state may maintain a juvenile registry, and provide a mechanism for the transfer of juveniles to the adult registry. However, we believe that the current Idaho system substantially complies with the requirements of SORNA and meets the stated policy objectives behind the law. We would therefore strongly encourage you to recognize this in the guidelines and consider explicitly acknowledging Idaho's "two registry" approach with a mechanism for the transfer of a juvenile to the adult registry as being in substantial compliance with SORNA. We believe that this approach would be consistent with the research on the effectiveness of registration requirements for juvenile sex offenders and would strike an appropriate balance between the community's right to know and the need to prevent the stigmatization of those juvenile offenders who are highly unlikely to re-offend.

Comment (4): Need for a comprehensive, federally created and maintained resource reference for the applicable laws in all jurisdictions. Since the purpose of SORNA is to have all states' sex offender registration relatively the same, it will be essential for the states to have as a reference a matrix of all state statutes corresponding to the federal statute. This would assist the registries in each state by having a source to consult to see how the provisions of different state statutes relate to one another. We believe that the DOJ should prepare a matrix in consultation with each state. The matrix will require updating as new statutes are passed. The matrix that the U.S. Probation Office does on the various state statutes would be a good example to follow.

Thank you for your consideration of the views of the Idaho Criminal Justice Commission on this important issue.

Sincerely,

Brent D. Reinke, Chairman
Idaho Criminal Justice Commission

Cc: Senator Larry Craig, Senator Mike Crapo, Congressman Mike Simpson, Congressman Bill Sali

July 30, 2007

Laura L. Rogers, Director
SMART Office
810 7th Street, NW
Washington, D.C. 20531

Re: Adam Walsh Guidelines

Dear Ms. Rogers:

I write as Chairman of the New Mexico Sex Offender Management Board to express my stringent opposition to the proposed inclusion of certain juvenile offenders on the various state and the national sex offender registry. Further, I strongly urge that the U.S. Department of Justice and Congress revisit the Adam Walsh Child Protection and Safety Act of 2006 and reconsider your respective positions with regard to children who have committed sexual offenses.

The New Mexico Sex Offender Management Board is composed of experts from the fields of law enforcement, law, treatment, victims' rights and corrections. We advise the Office of the Governor and the New Mexico Legislature regarding sex offender policy. While the Board has not taken a formal position on the above referenced issue, in Board meetings, our members have consistently expressed unanimous opposition to lifetime and twenty-five year sex offender registration for children who have committed sexual offenses, but who have not been convicted as adults.

I am certain that, based upon the same rationale, our members will likewise oppose your determination that Title I of the Adam Walsh Child Protection and Safety Act of 2006 applies retroactively to all children who have committed sex offenses, regardless of when they were adjudicated.

It is our opinion that the registration provisions of the Act generally should not apply to children adjudicated within the juvenile system. Such application flies in the face of the purpose, function and objective of this system. By deliberate design, our children are adjudicated delinquent and, thus, by definition are considered at least potentially amenable to change. In fact, I am aware of studies that indicate that the recidivism rate among children who have sexually offended is between 5 and 11%. Thus, the vast majority of these children will never commit another sexual offense regardless of registration.

I further believe that registration for children will prove counterproductive. The stigma and perpetual collateral consequences that will no doubt accompany

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aff:
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Julie Frendle
Nancy Gettings
Jennifer Honey
LaDonna LaRan

registration will almost certainly interfere with treatment and the normal socialization experiences critical to addressing these children's needs.

Finally, as a former prosecutor, you know the prospect of registration will unquestionably result in numerous cases being plead down from sexual crimes to nonsexual crimes. This will leave the offender, and probably the victim, with no treatment and might result in an increase in recidivism and collateral consequences for all concerned.

For these reasons, I join with my colleagues on the Juvenile Committee of the New Mexico Sentencing Commission in opposing extending registration to children adjudicated within the juvenile system in general.

Thank you for the opportunity to comment. I trust that my comments will be given serious and thoughtful consideration.

Respectfully,

By: General Counsel

Michael Vigil, Judge, Second Judicial District
Chairman, New Mexico Sex Offender Management Board

New Mexico Sentencing Commission

July 30, 2007

Laura L. Rogers. Director
SMART Office
810 7th Street, NW
Washington, D.C. 20531

Re: OAG Docket No. 117
Comments in Opposition to Interim Rule RIN 1.105--AB22

Dear Ms Rogers:

The Juvenile Committee of the New Mexico Sentencing Commission voted unanimously at its regular meeting on April 16, 2007 to express its opposition to the interim rule RIN 1.105--AB22. Further, the Committee strongly urges the U.S. Department of Justice and Congress to revisit the Adam Walsh Child Protection and Safety Act of 2006 and work diligently to strike a more compassionate and productive balance between victims of sexual abuse, particularly children, and child victims of sexual abuse who sadly exhibit abusive behaviors.

The Juvenile Committee of the New Mexico Sentencing Commission is comprised of many of the state's leaders in juvenile justice, including its chairman Robert Cleavall, former deputy director of juvenile justice, Dorian Dodson, Secretary of Children, Youth and Families, Lemuel Martinez, Appointed by District Attorneys Association, Angie Vachio, Appointed by the Governor, Hon. Jerry Ritter District Court Judge, Suellyn Scarnecchia, Dean of University of New Mexico School of Law, David Schmidt, Chairman of New Mexico's Juvenile Justice Advisory Committee as well as citizen members appointed by the Senate President Pro-Tempore.

The New Mexico Sentencing Commission also oversees the state Sex Offender Management Board, which will be sending its input to you under separate letter.

Our Juvenile Committee is opposed to the U.S. Department of Justice's interim determination that Title I of the Adam Walsh Child Protection and Safety Act of 2006, also known as the Sex Offender Registration and Notification Act (SORNA), applies retroactively to all sex offenders as defined by the Act regardless of when they were convicted. The committee also expressed its concern about the applicability of Title I to children who have been adjudicated within the juvenile system and not convicted as adults.

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SORNA as applied to juveniles flies in the face of the purpose, function and objective of our nation's juvenile justice systems in that it strips away the confidentiality that helps form the basis of effective intervention and treatment for youthful offenders.

This stripping away of confidentiality as it applies to children under the age of 18 cannot be taken lightly. It cannot be too strongly emphasized that the children implicated by this provision have not been convicted of a criminal offense, by deliberate action of the states' legislatures and prosecuting authorities. Rather, they have been adjudicated delinquent and, by virtue of that adjudication, have been found to be amenable to treatment and deserving of the opportunity to correct their behavior apart from the stigma and perpetual collateral consequences that typically accompany criminal convictions. Subjecting juveniles to the mandates of SORNA interferes with and threatens child-focused treatment modalities and may significantly decrease the effectiveness of the treatment.

For all of these reasons, Juvenile Committee of the New Mexico Sentencing Commission asserts that it is poor public policy for SORNA to be applied retroactively to children adjudicated within the juvenile system.

Conclusion

In closing, we thank you for the opportunity to comment on the Interim Rule for the Applicability of the Sex Offender Registration and Notification Act of 2006 and we trust that our comments will be given serious and thoughtful consideration.

Respectfully,

Michael Hall
Executive Director, New Mexico Sentencing Commission

Rosengarten, Clark

From: Rogers, Laura on behalf of GetSMART
Sent: Monday, August 06, 2007 10:39 AM
To: Rosengarten, Clark
Subject: FW: OAG Docket No. 121
Attachments: DNA Forensics Expanding Uses and Information Sharing Published April 30, 2007 to BJS Website.pdf

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From: Owen Greenspan [redacted]
Sent: Thursday, August 02, 2007 12:01 AM
To: GetSMART
Subject: OAG Docket No. 121

Thank you for the opportunity to comment on the Proposed National Guidelines for Sex Offender Registration and Notification as required in section 112(b) of Title 1 of the Adam Walsh Child Protection and Safety Act of 2006. Generally, I found the Guidelines to be an effective path to implementation of the Sex Offender Registration and Notification Act (SORNA) requirements. Congratulations on what I believe is a comprehensive effort that will, with some minor modifications, lead to fully workable solutions for the statutorily defined jurisdictions that are either required to implement the SORNA provisions or who may elect to do so.

The comments which follow selectively respond to both the Guidelines and implementation scenarios discussed at the 2007 National Symposium on Sex Offender Management and Accountability, held July 24-27, 2007 in Indianapolis, IN.

Re II General Principles – Terminology and IV Covered Sex Offenses and Offenders

- The provision that allows a tribal jurisdiction to choose not to require registration based on a tribal court conviction resulting from proceedings in which the defendant was denied the right to counsel, etc. may pose problems for all other jurisdictions (and ultimately even the convicting jurisdiction) as well as the convicted person. The Bureau of Justice Statistics Tribal Criminal History Record Improvement Program and various BJA efforts focused on information sharing are encouraging tribes to report (share) information with state criminal record repositories and the FBI. Increasingly tribes are being provided with funds to acquire live scan fingerprint devices to facilitate this process. It is easy to foresee situations in which a criminal history record will show a conviction for a sex offense but their will be no corresponding entry on any sex offender registry. This is sure to cause confusion and additional work. For example a child care agency, authorized under PL92-544 submits a fingerprint based inquiry to the state repository and learns that the applicant has a sex offense conviction in a tribal court. Typically either the state process or an independent query by the agency to the state sex offender registry should also reveal the applicant's conviction information. Is the criminal record in error? Did the applicant fail to satisfy registration requirements? Is there an administrative error here? Investigating these questions will be labor intensive and time consuming unless a way is found to indicate that registration was not required in this instance while still respecting the privacy that this provision affords. I suggest that a potential field or flag be added to the NCIC sex offender registry record – information that is only available to law enforcement (and which already has access to the criminal history record for investigation purposes) – that signifies that under SORNA registration for this conviction was not required.

Re II General Principles – Retroactivity and IX Initial Registration

- The guidelines talk about the potential difficulties of registering sex offenders with pre-SORNA or pre-SORNA-implementation convictions. The guidelines do not appear to recognize the difficulties of identifying these convictions. Clearly there are many instances where states will not be in compliance with SORNA requirements for current registrants and those who have moved to another jurisdiction and were no longer required to register but under SORNA would be required to register again. It seems to me that in the former instance a program will need to be written and run that looks for all state statutory codes that represent sex offenses, including those that have been amended over some reasonable period of time,

against the state's computerized criminal history file and those federal offender files held by the FBI. This may well require some funding. I suggest that this issue be required to be addressed as states develop SORNA implementation plans.

e II General Principles – Automation – Electronic Databases and Software and related provisions in Sections VI, √II, and X

- It was indicated at the Indianapolis Symposium that the software required under Section 123 would be developed in consultation with the jurisdictions. Consequently, rather than speculate about the issues associated with the software I will comment on a related issue – RISS versus LEO. It was suggested at the symposium that the decision as to the data communications network has been made with the Regional Information Sharing System (RISS) being the choice. Several members of the audience expressed a preference for the FBI administered Law Enforcement on Line (LEO). There are probably relative advantages and disadvantages to each with perhaps differing perspectives between the registry agencies and the administrators of the national public sex offender registry. As I understand it the national public registry is not a database but rather accesses the state registry web sites. If that is essentially correct that the bulk of the information that needs to move from the state registry goes to the FBI NCIC file. A lesser amount of information can be expected to move between repositories when a registrant moves between jurisdictions. In most, if not all instances the state repositories already are LEO users while many of them may not be RISS users. I suggest that this remain an open issue until such time as it is discussed with the advisory group that will be empanelled by the SMART Office to address software requirements.

Re II General Principles – Implementation and III Covered Jurisdictions

- Section 124 addresses the circumstances that would cause a 10% reduction in Byrne Justice Assistance funding. I suggest that some clarification would be helpful? As this section refers to funding being withheld from jurisdictions because of noncompliance it should be made clear as to the extent that this penalty may be imposed on tribal jurisdictions. Further, in view of the provision which allows tribal jurisdictions to signify their intention of establishing a registry and then subsequently entering into a cooperative agreement with a state that could include provision of registry services it would be appropriate to indicate awareness or not resolution of the possibility that a state could be deemed not to be in substantial compliance should a tribal jurisdiction fail to meet its obligations under the cooperative agreement. In addition, the Guidelines treat all optional PL 280 States as if they are non PL 280 States. Given the possibility that some tribal jurisdictions in optional PL 280 States may be providing some information to state registries already or that such tribal jurisdictions may already have registries perhaps it would be helpful for the guidelines to discuss the status of tribal jurisdictions in optional PL 280 States.

Re V Classes of Sex Offenders

- At the Indianapolis symposium it was indicated that the SMART Offenses plans to establish a database of state sex offense statute and has invited states to forward this information. Will provision be made and a effort extended to include in the database appropriate federal offenses, military offenses and tribal code violations?

Re VI Required Registration Information

- Re Text of registration offense – see comment under V Classes of Sex Offenders
- Re Fingerprints and Palm Prints – ANSI NIST standards for capture and transmission of this information exists and should be required by the guidelines if this information is to be retained in a usable and transmittable form. The guidelines might also wish to recognize that at this point in time palm print are largely unsearchable in an automated fashion at local, state and federal levels so the utility of the palm print is apt to grow over time.
- Re DNA – this section should be reexamined as most registry agencies do not have access to CODIS to confirm the absence or presence of DNA sample. There are several related issues here. Please see attached report DNA Forensics Expanding Uses and information Sharing which I coauthored.

Re VII Disclosure and Sharing of Information

- Re National Child Protection Act Agencies (Section 121(b)(4)) – the guidelines appear to address the background check that is conducted at the time background check is conducted as part of a fitness determination. I suggest this section discuss and encourage implementation of applicant fingerprint card retention (many states already do this to some extent) and the associated procedure often referred to as "rap back" or "hit notice." This procedure provides a agency with a criminal history record whenever a subject of interest is arrested – in effect a perpetual background check.

Re In-person appearance requirements

- There is a range of purposes and information to be captured during required in-person appearances. These appearances will likely be time consuming and labor intensive (read costly) for the registry personnel. I suggest that jurisdictions be allowed to include in their implementation plans provisions which would allow the use of biometric technologies (e.g., fingerprint, voice, iris scan etc.) to satisfy some of the

conditions for in-person appearance. With this authorization the SMART Office could then assess whether this use of technology was substantially compliant with the intent of SORNA.

Other Thoughts

- It would be helpful if the SMART Office were to develop a set of "FAQs" to address state questions that will arise as tribes and states discuss the possibility of cooperative agreements that would alter the tribes election to create a registry.
- How will "time" for period of registration be calculated when a tribal member registrant moves from a tribal jurisdiction with a registry but remains in the same state and that state has a registration requirement different than the tribal jurisdiction? Same question and the offender moves to a different state?

Again, thank you for the opportunity to comment and please let me know if I can clarify any of the above.

Owen Greenspan

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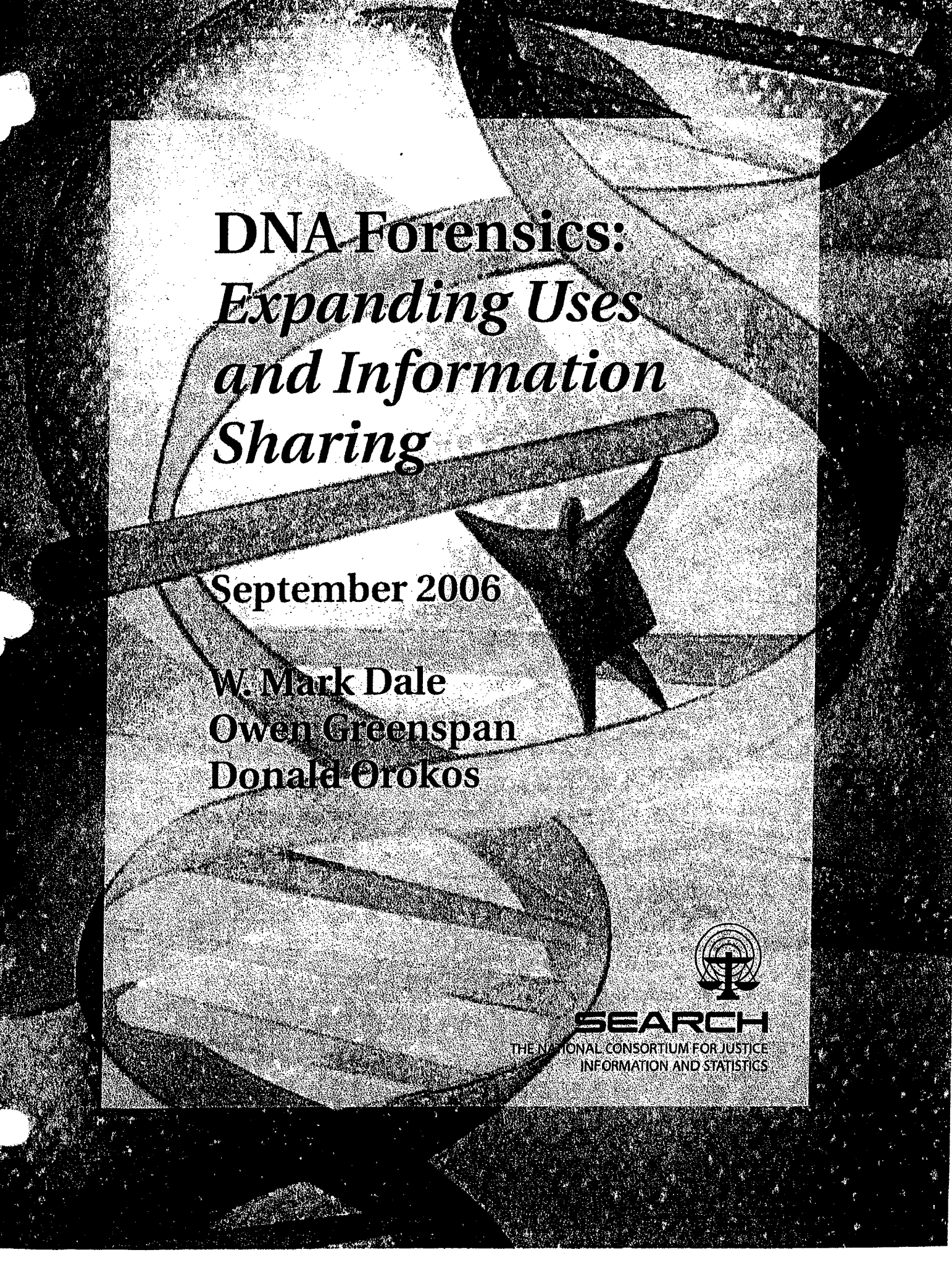

DNA Forensics: *Expanding Uses and Information Sharing*

September 2006

W. Mark Dale
Owen Greenspan
Donald Orokos

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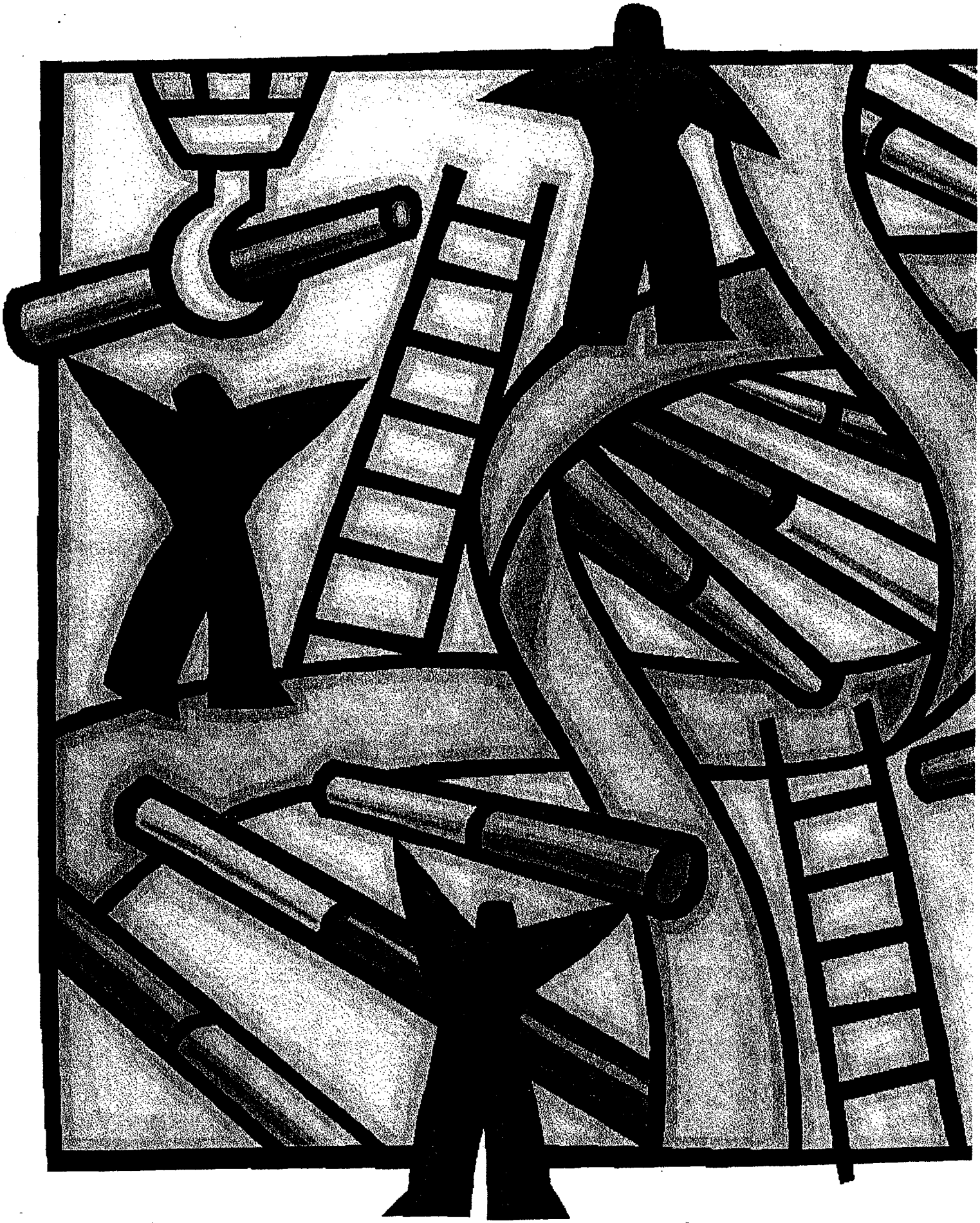
Contents



Preface

The value of DNA in verifying identities, excluding suspects, and solving crimes—particularly those that have gone unsolved for years—has far exceeded the expectations of those who first noticed its forensic potential more than 20 years ago. *DNA Forensics: Expanding Uses and Information Sharing* was prepared to inform the broad justice community about the evolution of DNA identification and its expanding uses.

The report examines the history of DNA use by forensic investigators, considers the economics of DNA use as it relates to public safety, and reviews privacy concerns relating to the release of an individual's genetic information. The report explores issues associated with the coupling of criminal history information with DNA data and recommends that mechanisms be put in place that would make for a more efficient justice system while effectively continuing to address privacy concerns.

The report utilizes some terms that may not be familiar to those not associated with the DNA forensics community. Therefore, this report includes a glossary to assist readers.

Dramatic advances in DNA forensics will continue to propel this once-exotic science into more mainstream criminal justice applications, perhaps even allowing it to someday replace the fingerprint as the primary tool for verifying identities. It is hoped that this report allows readers to understand how these developments have occurred, and to monitor the progress of DNA forensics in a more informed capacity.

Glossary

While the science of DNA is replete with complicated concepts, components, and procedures, this report was written with the layman in mind; thus, scientific jargon was kept to a minimum. However, it would be difficult, if not impossible, to write a report such as this without including some of the terminology common to forensic DNA use. The following list is provided to assist readers in understanding the processes through which forensic investigators use DNA to identify perpetrators when traditional crime-solving methods have failed.

ABO blood typing
A human blood-typing test that uses antibodies from bodily fluids to determine whether an individual has A, B, O, or AB type blood. ABO typing was commonly used in the past, before the implementation of DNA analyses.

Combined DNA Index System (CODIS)
An electronic database of DNA profiles obtained from unsolved crimes and from individuals convicted of particular crimes. CODIS contributors include the Local DNA Index System (LDIS), the State DNA Index System (SDIS), and the National DNA Index System (NDIS). CODIS is maintained by the FBI.

Deoxyribonucleic acid (DNA)
A nucleic acid that contains genetic instructions for the biological development of all cellular forms of life. DNA is responsible for most inherited traits in humans. Forensic scientists use DNA from blood, semen, skin, saliva, or hair recovered from crime scenes to identify possible suspects through DNA profiling, during which the length of repetitive DNA sections are compared. An individual's DNA is unique except for identical twins.

DNA polymerase
An enzyme that assists in DNA replication.

Electrophoresis
A process that occurs when molecules placed in an electronic field migrate toward either the positive or negative pole according to their charge. The process is used to separate and sometimes purify macromolecules that differ in size, charge, or conformation. Electrophoresis is one of the most widely used techniques in biochemistry and molecular biology.

Mitochondrial DNA (MtDNA)
Differs from nuclear DNA in location, sequence, quantity in the cell, and mode of inheritance. MtDNA is found in a cell's cytoplasm and is present in much greater numbers than nuclear DNA, which is found in a cell's nucleus. In humans, MtDNA is inherited strictly from the mother. It is useful in identifying individuals in areas not conducive to nuclear DNA analyses, such as when nuclear DNA cannot be obtained in sufficient quantities or quality. Also, MtDNA use in identification is less efficient than nuclear DNA analysis in that it cannot differentiate between individuals who share the same mother. The statistical probabilities for identification from MtDNA are not as unique as nuclear DNA.

Polymerase Chain Reaction (PCR)
A process through which millions of copies of a single DNA segment are produced in a matter of hours without using living organisms like E. coli or yeast. The process relies on several basic components, including a DNA template, which contains the DNA segment to be amplified; two primers, which determine the beginning and end of the region to be amplified; DNA polymerase, which copies the region to be amplified; Deoxynucleotides-triphosphate, from which the DNA polymerase builds the new DNA; and a buffer, which provides an appropriate chemical environment for the DNA polymerase. PCR occurs when the components are combined in a test tube, which is then heated and cooled to different temperatures to encourage various chemical reactions.

Restriction Fragment Length Polymorphism (RFLP)
A process through which DNA is cut by restriction enzymes into restriction fragments. The enzymes only cut when they recognize specific DNA sequences. The distance between the locations cut by restriction enzymes varies between individuals, allowing their genetic identification.

Single Tandem Repeats (STR)
Small DNA regions that contain DNA segments that repeat several times in tandem. Repeated sequences are a fundamental feature of genomes, such as DNA, and play an important role in genomic fingerprinting. CODIS uses 13 STR sequences as genetic markers.

Variable Number of Tandem Repeats (VNTR)
Short DNA sequences ranging from 14 to 40 nucleotides organized into clusters of tandem repeats of between 4 and 40 repeats per occurrence. VNTRs cut by restriction enzymes reveal a pattern of bands unique to each individual. They play an important role in forensic crime investigations.

Overview

The application of DNA technology to the biological evidence in criminal casework has revolutionized forensic science. The ability to identify, with a high degree of certainty, a suspect in violent crimes now routinely provides valuable leads to criminal investigators worldwide, often in circumstances where there are no eyewitnesses. Forensic DNA technology is a very sensitive and universally accepted scientific technique. The **Combined DNA Index System** (CODIS), administered by the Federal Bureau of Investigation (FBI), is a distributed database with three hierarchical tiers enabling local, statewide, and national comparisons among convicted offender profiles and with crime scene samples. As of June 2006, it contains more than 3.3 million convicted offender profiles and more than 142,000 profiles from crime scenes, and has produced 36,000 "investigation-aided" matches in 49 States and 2 Federal laboratories.[1] DNA analysis also benefits the innocent. Suspects may be eliminated before arrest or exonerated even after conviction.

Information is the lifeblood of the criminal justice system. Despite the wonders of DNA science and technology, DNA use cannot achieve its full promise in the context of criminal justice applications unless there are efficient means in place for criminal investigators to obtain the criminal history information of a suspect when a match is made between physical evidence collected at the crime scene and a profile stored in a local, State, or national database. Once the crime lab completes its work, should it report a match, the investigator must learn as much as possible about the suspect. Traditionally, the criminal history record (or "rap sheet") is a primary source for learning about the nature of the suspect's past offenses and provides a path to physical description information, a "mugshot" photograph, past modus operandi information, and known associates, and is often of considerable value in locating the suspect.

Source: FBI CODIS web site at **http://www.fbi.gov/hq/lab/codis.**

Privacy advocates have consistently raised concerns about linkages between personal identifying information and an individual's DNA, which can reveal genetic information about the individual and his/her family members. This issue has led to policies and practices whereby there is no formal interface between CODIS and any criminal history record information systems. Further, CODIS does not store criminal history information, nor was it designed to include any personally identifying information about the subject of the DNA sample.[2] States have tended to follow the FBI's lead in this area. In fact, a number of the State laws expressly prohibit the linking of criminal history record information with an offender's DNA profile.[3]

Yet establishing linkages between DNA databases and State and Federal criminal history databases would enable an investigator to know that a suspect's DNA profile is available for comparison. Perhaps just as important, a linkage mechanism could serve as a flag to indicate that an offender's DNA sample has *not* been obtained, although required by law. Consequently, the offender's DNA profile would be unavailable for comparison with material recovered from a crime scene. The challenge for the criminal justice community is to create an environment that efficiently leverages the power of DNA technology, while allowing for sharing (or at least access to) essential information in a manner that respects privacy concerns.

2 Letter from Thomas F. Callaghan, Ph.D., Chief, CODIS Unit, FBI Laboratory, to Owen Greenspan, Director, Law and Policy Program, SEARCH, The National Consortium for Justice Information and Statistics, dated June 16, 2005. Hereafter, Callaghan Letter.

3 Ibid.

DNA Collection Legislation

The FBI is responsible for the administration and upport of the National DNA Index System (NDIS) in accordance with Federal law.[4]

All States have enacted laws requiring the collection of DNA from offenders convicted of specified crimes. Many States are moving to expand the circumstances mandating collection and retention to include more or all convicted felony offenders and some convicted misdemeanor offenders, extending or eliminating the statute of limitations for certain offenses where DNA evidence exists, and even requiring the taking of DNA samples subsequent to arrest but before disposition.

For example, the enactment of California Proposition 69 in November 2004 authorized the collection of DNA samples from adults and juveniles convicted of any felony offense, as well as adults and juveniles arrested for or charged with felony sex offenses, murder, or voluntary manslaughter.

Table 1[5]

Database Criteria	Number of Jurisdictions*
Sex Offenses	55
Murder	54
Offenses Against Children	54
Kidnapping	54
Assault and Battery	53
Robbery	53
Burglary	52
All Felonies	44
Juveniles	31

* The 55 jurisdictions referenced include the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, Federal Offenders under authority of 42 U.S.C. § 14135a, and persons charged by the U.S. Department of Defense under authority of 10 U.S.C. § 1565.

4 42 U.S.C. § 14132.

allaghan Letter.

Effective in 2009, all adults arrested for or charged with any felony offense in California will be subject to DNA sample collection. The trend toward increasing the number and types of designated offenses that require the taking of DNA samples will significantly increase local, State, and national database populations. Table 1 summarizes the frequency with which State laws direct or authorize the taking of DNA samples for certain convictions.

DNA, Economics, and Public Safety

Recidivism is the fundamental factor that provides the underlying rationale for the DNA database program. As noted in a 2003 report on sex offender recidivism:

- "Within 3 years following their release, 38.6% (3,741) of the 9,691 released sex offenders were returned to prison."[6]
- "The first 12 months following their release from a State prison was the period when 40% of sex crimes were allegedly committed by the released sex offenders."[7]

The *National Forensic DNA Study Report* found that there is a backlog of over one-half million criminal cases containing unanalyzed DNA evidence.[8] These cases either have not been sent to laboratories, or are in laboratories awaiting analyses. A 1996 report, *Victim Costs and Consequences: A New Look,* examines the many tangible and intangible costs of crime as it pertains to victims in the United States.[9] The authors estimate the tangible costs of rape to be approximately $5,000 per assault. When intangible costs that affect the victim's quality of life

6 Patrick A. Langan, Erica L. Schmitt, and Matthew R. Durose, *Recidivism of Sex Offenders Released from Prison in 1994* (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, November 2003) at p. 2. Hereafter, Langan report.

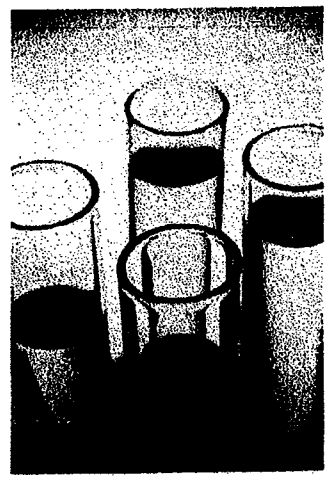
7 Ibid., p. 1.

8 Nicholas P. Lovrich, et al. (Pullman, WA: Washington State University and London: Smith Alling Lane, February 2004) at p. 3.

9 Ted R. Miller, Mark A. Cohen, and Brian Wiersema (Washington, DC: U.S. Department of Justice, National Institute of Justice, January 1996) at p. 1.

are considered, the cost estimate rises to $87,000 per assault. The report also projects that violent crime leads to 3% of all medical spending and 14% of injury-related medical spending. The aggregate tangible costs of medical spending for rape is $7.5 billion per year. When pain, suffering, and lost quality of life are considered as well as out-of-pocket expenses, the aggregate annual cost of rape is estimated to be $127 billion. Personal crime medical costs total $105 billion per year, with total intangible quality of life costs totaling $450 billion per year. There is a clear cost benefit for timely DNA analyses for violent crime cases. For example, a Master of Business Administration thesis, "Business Case for Forensic DNA,"[10] discussed how solving sexual assaults with DNA analyses would eventually lessen recidivism and be cost effective.

DNA technology is expensive, but the potential cost benefits are staggering—given both the tangible (DNA analyses and victim's medical treatment) and intangible (quality of life for victim and community) costs incurred because of crime that can be solved with the aid of DNA technology. The national United Kingdom (UK) DNA database contains 3.5% of its population in the convicted offender index and yields a 40% hit rate. The UK Forensic Science Service's DNA database of 3 million convicted offender samples not only has the probability of delivering a hit 40% of the time, but it solves .8 additional cases per hit and prevents 7.8 crimes for every hit.[11] The UK system operates under a legal system significantly different from that of the United States—it is one that allows DNA collection from arrestees and even in the course of neighborhood sweeps.



The growth in reliance on forensic DNA programs has led to significant casework backlogs in public laboratories. A Bureau of Justice Statistics census of publicly funded forensic crime laboratories, *50 Largest Crime Labs, 2002*, identified compelling data for the ever-increasing caseloads on public DNA laboratories.[12] Only one-third of the DNA cases submitted to public laboratories are analyzed. Most public forensic laboratories can only analyze the most serious cases that are scheduled for court. This leaves potential evidence from many other cases unanalyzed. A study in one State indicated that lesser offense cases provide the majority (81%) of hits in CODIS rather than homicides and rapes.[13] There is a 1.69 ratio of backlogged to completed DNA cases per year. Simply stated, if a laboratory analyzes 1,000 DNA cases, the same laboratory carries a backlog of 1,690 cases, or 1.69 years of work.

The Science and Evolving Technology of DNA

Comparisons between latent prints left at crime scenes and known fingerprints from suspects had been the traditional method for using physical evidence to place individuals at the scenes of crimes. Manual searching of fingerprint files in the absence of a suspect, known as "cold searching," was a tedious, challenging, and often impractical process. In the 1980s, with the advent of **automated fingerprint identification systems** (AFIS), police departments no longer needed a suspect. Partial fingerprints recovered from a crime scene could be automatically searched against massive databases of arrest fingerprints with greater accuracy and

10 Ray A. Wickenheiser, University of Louisiana, Lafayette (2002).

11 Christopher H. Asplen, *The Application of DNA in England and Wales* (London: 4th Alling Lane, January 2004) at p. 1.

12 Matthew J. Hickman and Joseph L. Peterson (Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, September 2004).

13 Virginia Department of Forensic Science, "DNA Database Statistics," (2005).

Is the DNA Match Linked with the Criminal History Record Information?

No. Because an individual's DNA has the potential to reveal genetic information about that individual and his/her family, privacy advocates continue to voice concerns about the proliferation of DNA offender databases and access to the DNA data in those databases. The "eugenics" argument is that genes, unlike fingerprint patterns, contain information about an individual's racial and ethnic heritage, disease susceptibility, and even behavioral propensities.[30] Insurance companies, employers, or government agencies might raid the data for health-related information, leading to genetic discrimination against individuals or groups. Behavioral researchers will not be able to resist a database of convicted criminals.

The FBI Laboratory Division sponsored meetings with privacy and defense advocates during the information gathering stages for CODIS. As early as 1991, the FBI laboratory issued "Legislative Guidelines for DNA Databases," stating that personal information stored in CODIS will be limited ...CODIS will not store criminal history information." The policy of maintaining limited information in CODIS remains today.[31]

A similar policy has been adopted by many States. Illustrative of State DNA databases laws are:

- The California Penal Code provides that "DNA and other forensic identification information retained by the Department of Justice ...shall not be included in the state summary criminal history information."[32]
- A Florida statute provides that "any analysis, when completed, shall be entered into the automated data maintained by the Department of Law Enforcement ... and shall not be included in the state central criminal justice information repository."[33]
- A Rhode Island law provides that "all DNA typing results and the DNA records shall be stored in a computer database after all personal identifiers have been removed."[34]

Clearly, there is considerable agreement at both the national and State levels that it is inappropriate to include personal information in DNA databases, including criminal history record information that typically includes physical, biographic, and other descriptive data.

Is the Criminal History Record Information Linked with the DNA Match?

Again, the answer is no. In May 2005 none of the 31 State criminal history repositories responding to a survey by SEARCH, The National Consortium for Justice Information and Statistics, reported making provision for the inclusion of a subject's DNA profile on the criminal history record. However, 13 of the 31 States reported employing a flag on the criminal history record to indicate that a sample had been collected, including 6 States that indicate whether the profile is located on a local, State, or national database.[35]

30 Simon A. Cole, "Fingerprint Identification and the Criminal Justice System: Historical Lessons for the DNA Debate," in *The Technology of Justice: DNA and the Criminal Justice System*, David Lazer (ed.) (Cambridge, MA: John F. Kennedy School of Government, Harvard University, June 2003) at p. 19.

31 Callaghan letter.

California Penal Code § 299.5(d)).

33 Florida Statutes § 943.325(1)(d)(6)).

34 Rhode Island General Laws § 12-1.5-10 (1).

35 The 13 States were California, Illinois, Kansas, Kentucky, Maine, Michigan, New Jersey, New York, Oregon, Pennsylvania, South Carolina, Tennessee, and Washington.

It is not surprising that a reference to personal identifying information is found on the rap sheet. State criminal history records typically include an identification segment with a provision to record and display some, if not all, of the following personally identifying descriptive elements:

- Name
- FBI Number
- State Identification Number
- Correctional Number
- Social Security Number
- Miscellaneous Identification Number
- Driver's License Number
- Place of Birth
- Date of Birth
- Country of Citizenship
- Sex
- Race
- Height
- Weight
- Eye Color
- Hair Color
- Skin Tone
- Fingerprint Pattern
- Photo Available
- Scars, Marks, and Tattoos
- Employment Information
- Residence

In its December 1995 report, the National Task Force on Increasing the Utility of the Criminal History Record (Criminal History Utility Task Force) recognized the growing use of DNA evidence in criminal cases and the emergence of databases of DNA information. Among its recommendations, the Task Force proposed that a data element be added to the identification data on the criminal history record to indicate the existence and location of DNA samples or profile data. For this data element, location would be indicated by the name and the Originating Agency Identifier (ORI) of the agency holding the information.[36]

In 1996, the Joint Task Force (JTF) on Rap Sheet Standardization, with representation from the FBI Criminal Justice Information Services Division and its Advisory Policy Board, the National Law Enforcement Telecommunications System, and SEARCH, was formed to implement the recommendations of the Criminal History Utility Task Force by developing a standardized criminal history format for interstate transmission. After much discussion, the JTF opted to establish an element that allows for two kinds of reporting relating to DNA. First, the most common and useful is to report that a DNA sample has been taken from the subject, has been coded, and is available from a specific agency. Second, and not normally included in a criminal history response, is the optional ability to transmit the actual detail of the DNA profile. The latter capability was included should implementations evolve that would be facilitated by the transmittal of the detail code.[37] Some States that have yet to adopt the standardized criminal history record have instead opted to note on the rap sheet when an inmate has been convicted of a designated offense, and if a DNA profile is available in CODIS.[38]

36 SEARCH, The National Consortium for Justice Information and Statistics, *Increasing the Utility of the Criminal History Record: Report of the National Task Force* (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, December 1995).

37 This specification is available at **http://it.ojp.gov/jsr/common/list1.jsp?keyword=1&forlist=1&community=yes.**

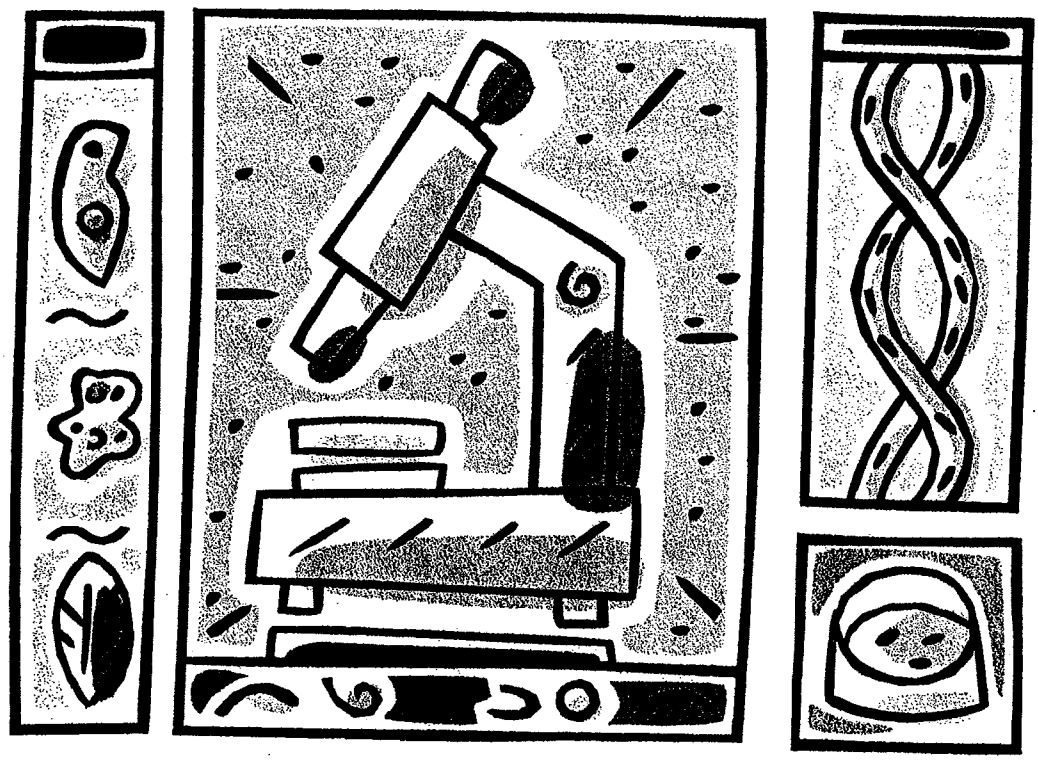
38 Source: New York State Division of Criminal Justice Services, 2005.

Sharing Information between CODIS, AFIS, and Criminal History Systems: Potential Benefits

The technologies of the DNA database (CODIS), fingerprint comparison (AFIS), and criminal history record systems are highly effective, albeit costly, tools for law enforcement. A detective no longer needs to identify a suspect before a latent fingerprint recovered from a crime scene is compared against a file of fingerprints of persons previously arrested in the jurisdiction, State, or nation. These automated searches and comparisons have become routine. The exchange of limited information among CODIS, AFIS, and criminal history records would provide law enforcement with the awareness that potential probative forensic evidence exists that involves a convicted or arrested offender.

Benefits derived from increased connectivity among different forensic technologies should be explored further. Of major benefit is the potential to increase the accuracy, timeliness, and utility of information provided to the criminal justice community. More hits, more exclusions, and a higher certainty of identification can be realized by combining two identification technologies (CODIS and AFIS) with criminal history databases.

Legislation authorizing the expansion of DNA databases to include new offenses often includes two components. The first is an effective date at which time all persons convicted of the new offenses are required to provide a DNA sample. The second provision may be retroactive and requires the police to have knowledge of past convictions for the newly authorized offenses. An accurate identity and criminal history of the offender is critical for the acquisition of the DNA sample. Technology can provide an electronic comparison of the databases (criminal history, CODIS, and AFIS) to identify who is required to provide samples, and who has already provided samples for the database. This connection of the AFIS, CODIS, and criminal history databases is even more critical when applied to violent crime and sexual offender registries. Law enforcement can then work more efficiently and accurately to obtain DNA samples, providing more timely leads to criminal investigators.



Conclusion

The power of DNA technology both identifies and excludes suspects. In criminal justice applications, the data contained in the DNA profile is held separate and apart from the identification and other information, which constitute the criminal history record, a circumstance that reflects broad-based privacy concerns about the potential for misuse of DNA profile information. While there is clear consensus that personally identifying information should not be present in DNA databases, it is that very identifying information that an investigator needs to connect the DNA match to a suspect.

The inclusion of DNA profile availability and location information within the criminal history record holds out the promise of several significant operational and public safety benefits. If a suspect has a DNA profile on the State DNA database and the evidence in that case has been entered into the database with no resulting matches, then law enforcement may need to consider directing investigative efforts elsewhere. Knowledge that a DNA sample has not been provided when one is statutorily required is also beneficial, as it will promote the collection of samples without which a correspondent reduction in public safety could occur, or more recidivistic crimes remain unsolved.

Mechanisms for coupling criminal history information with select information about the availability of DNA data are readily available but have not been widely implemented—to the detriment of a more efficient justice system. The Interstate Criminal History Transmission Specification provides for an indication on the rap sheet that a DNA sample has been taken from the subject, has been coded, and is available from a specific agency. Similarly, several States, without implementing the transfer of standardized criminal history, have opted to flag the rap sheet with some or all of this information.

At its December 2005 meeting, the FBI Criminal Justice Information Services (CJIS) Advisory Policy Board (APB)[39] recommended to the FBI Director several enhancements to address the inclusion of DNA flags within the Interstate Identification Index, the national criminal history record exchange system administered by the FBI, including:

(1) allowing States to flag whether a subject's DNA profile is registered, and where that profile is located;

(2) allowing a DNA indicator to be used to indicate that DNA profiles are available at both the State and national levels;

(3) a proposed protocol for the FBI Laboratory Division to inform the Criminal Justice Information Services Division of Federal convicted offender DNA registration status data; and

(4) the inclusion of DNA indicator information on the criminal history record information response to select inquiries.

In sum, these approaches respect privacy concerns by keeping the barrier in place that prevents criminal history information and other personally identifying information from being included in DNA databases, while at the same time enhancing investigative capabilities through a more informative criminal history record.

39 The FBI CJIS APB is chartered under provisions of the Federal Advisory Committee Act of 1972 to advise the FBI Director on criminal justice information services issues. The APB is comprised of a network of working groups and subcommittees. The members represent local, State, and Federal law enforcement and criminal justice agencies throughout the United States, its territories, and Canada. Source: *CJIS Advisory Policy Board Advisory Process Information Handbook*, 2005.

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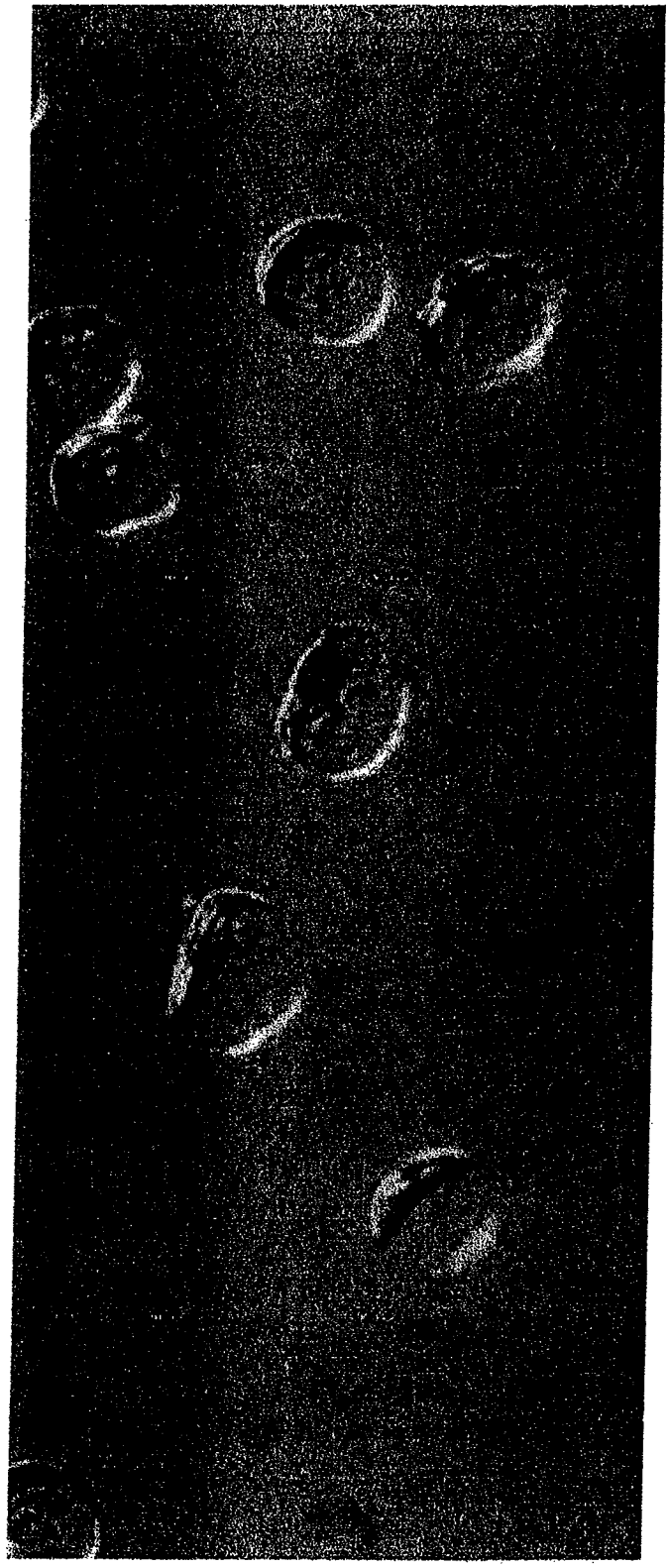
About the Authors

W. Mark Dale is Director of the Northeast Regional orensic Institute (NERFI) located at the State Jniversity of New York at Albany. NERFI provides graduate-level training and instruction in forensic DNA programs and serves as a resource for law enforcement and other governmental forensic laboratories through development of customized DNA academies. Mr. Dale previously was Director of the New York City Police Department Laboratory, Director of the New York State Police Laboratory System, and Director of the Washington State Patrol Laboratory System, and is a past President of the American Society of Crime Laboratory Directors.

Owen Greenspan is Director of the Law and Policy Program for SEARCH, The National Consortium for Justice Information and Statistics. SEARCH, a nonprofit organization of the States, is dedicated to improving the quality of justice and public safety through the use, management, and exchange of information; application of new technologies; and responsible law and policy, while safeguarding security and privacy. Mr. Greenspan previously was Deputy Commissioner with the New York State ivision of Criminal Justice Services responsible for the operation of the State's criminal records repository, provision of information technology services to the State's justice agencies, and certification of police training. He is retired from the New York City Police Department, where he last served as Commanding Officer of the Identification Section.

Dr. Donald Orokos is a tenured faculty member at the State University of New York at Albany in the Department of Biology, where he teaches cell biology and immunology. Dr. Orokos also serves as the Associate Director of NERFI, and provides administrative oversight to all academic forensic programs.



Rosengarten, Clark

F-m: Rogers, Laura on behalf of GetSMART
: Monday, August 06, 2007 10:41 AM
Rosengarten, Clark
ubject: FW: Docket # OAG 121

Attachments: 07.31.07 AWA Guidelines Comments.doc

07.31.07 AWA
Guidelines Commen..

-----Original Message-----
From: Kay Cohen [redacted]
Sent: Wednesday, August 01, 2007 7:01 PM
To: GetSMART
Subject: Docket # OAG 121

Please accept these comments on the Guidelines for implementation of the ADam Walsh Act from the National Criminal Justice Association.

Docket No. OAG 121

NCJA National Criminal Justice Association

July 31, 2007

Ms. Laura L. Rogers
Director
SMART Office
Office of Justice Programs
U.S. Department of Justice
810 Seventh Street, NW
Washington, DC 20531

Dear Ms. Rogers:

On behalf of the National Criminal Justice Association (NCJA), I would like to offer comments on the proposed National Guidelines for Sex Offender Registration and Notification (Guidelines). We embrace the goals of the Adam Walsh Act and its implementation and applaud the work of the SMART Office of the U.S. Depart of Justice (Department) in drafting these proposed guidelines with limited resources and within severe time constraints. We thank you for this opportunity to suggest that some public policy decisions encompassed in the proposed guidelines should be reconsidered and restructured.

State-Tribal Collaboration

The lynch pin of the successful implementation of the Adam Walsh Act will be strong and effective collaboration between state and tribal governments. Whether tribes opt to exercise their right to be a registration jurisdiction or not, states and tribes within their jurisdictional boundaries will be required to partner on many aspects of the Act's implementation. For instance, even for tribes which become a registration jurisdiction, the Act provides that they are not required to duplicate notification and registration functions. There is a strong likelihood that tribes will chose to partner or share duties with the state in fulfillment of the requirements of the Act and we would support and encourage that type of state-tribal collaboration. Of necessity under any circumstance, tribes and states must work out the details of the process of initial registration, digitization of information required to be collected, procedures for verification in Indian Country, and linkages between the two systems. Since historically the federal government has functioned on a government-to-government basis with the tribes and provided criminal justice services and functions in Indian Country, most states and tribes have not developed systems and processes for working together in the justice setting. Furthermore, a tribe may choose to rescind their election at anytime

in the future, immediately and abruptly sending delegation of the Act to the state. Therefore, we believe it is critically important that states and tribes work together on implementation of the Act from the outset. We strongly encourage the U.S. Department of Justice to take a leadership role in fostering communication and coordination between states and tribes to ensure development of meaningful, effective and efficient collaboration.

State Notification Process

As mentioned above states will automatically be delegated authority over tribes which rescind their election at any time during the life of the Act. However, states will also be delegated authority over any tribe found in non-compliance any time in the future. Yet, the Guidance offers no mechanism for states to be kept informed of a tribe's election status and, hence, given no warning for when that shift in delegation authority could occur. Therefore, we request a process to be included in the Guidelines which allow states to be routinely and continually apprized of the status of the tribes within their jurisdictional boundaries.

Notice Requirements and the Definition of Jurisdiction

The Act defines a jurisdiction to include only tribes which have elected to become a Sex Offender Registration and Notification Act (SORNA) registration jurisdiction. The Guidelines provide for notification requirements to these tribes. We would strongly encourage the Department to broaden the Guidelines to include all tribes regardless of their registration status as jurisdictions who should receive communication and notification by the Department and by the states. We support strong communication and notice that is inclusive rather than exclusive and keeps all parties regardless of registration status in the communication loop and full process.

Process for Determining Substantial Compliance

Typically, federal laws requiring action and compliance on the part of states specify considerable detail on the process for coming into compliance, opportunities to cure non-compliance and for communication mechanisms among the federal and state governments on process. These Guidelines however offer minimal direction to benchmarks and performance measures for the states and tribes. This could have particularly deleterious effects in the implementation of the Adam Walsh Act because of the complex relationship between the tribal and state entities and their roles in compliance. Since it is the state that will be assessed the financial penalties for non-compliance, including in the extreme for tribes found out of compliance with their registration election revoked, it is imperative the process and standards for determining substantial compliance be articulated and delineated as clearly as possible.

Role of Federal Prisons

The Guidelines state that federal prisons will not be required to conduct the initial registration on sex offenders as they are released from custody including the collecting of DNA samples, fingerprinting, photographing, and securing a digitized copy of the statute under which they were convicted. They will also not be required as state, local and tribal detention facilities will be to enter this information into the registry system. The Act requires offenders to register within three days in the jurisdiction where they will reside, are employed or attend school. Therefore those localities will

have to bear the burden of the initial processing costs for all offenders released from federal prisons. We urge instead that federal prisons be required to meet the initial registration requirements for all offenders released from federal custody as required of state and local detention facilities.

Creation of an Advisory Group

The Department of Justice should regularly convene an advisory group made up of state, tribal and local representatives to offer expertise and guidance in the many complex issues surrounding final implementation of the Act in the states and Indian Country. Other working group or subgroups should also be created as needed and determined by the larger advisory group to work with the Department in the implementation of SORNA. The issues require a further discussion among state, tribal, local and federal partners.

Technical Assistance and Training

We support the creation of the Sex Offender Management Assistance (SOMA) program under the Act to offset the costs of its implementation. To implement SORNA successfully state and tribes will need as much technical assistance and training as possible. We would encourage the Department to find ways to provide these services since it will likely result in higher compliance rates in all jurisdictions and implementation that is closer to the goals of SORNA as a whole.

We are concerned, however, with the concept of a bonus payment to states for "prompt compliance" with the Act. Particularly given the difficulty and complexity of developing a registry process between tribes and states we think this bonus payment system, no matter how worthy in concept, will disadvantage states with tribes in their boundaries. We are also concerned that the bonus payment will encourage states to adopt an exception to registration based on tribal court convictions for denial of a right to counsel which the language of the Guidelines permit with out an explanation of process, standards, documentation, redress, or review. We fear that this bonus payment concept, therefore, will serve to discourage real state/tribal collaboration and have the effect of further eroding tribal sovereignty.

Determination of Acceptance of Tribal Court Convictions

The Guidelines as mentioned previously permit the state to make a determination not to accept tribal court orders based upon a denial of right to counsel in the proceedings of the conviction. We encourage the Department to remove that authority from the states as it could invite abuse and undermines the respect and partnership that needs to exist between states and tribes in order to create an effective registry system. This authority also flies in the face of the work done to grant full faith and credit of tribal orders in the Violence Against Women Act and the work of domestic violence law for the last several years. No standards, documentation requirements, process for redress, or method for holding states accountable for such decisions is absent and is required if such authority remains in the Guidelines.

We appreciate this opportunity to comment on the Guidelines for implementation of the Adam Walsh Act. We would be remiss, however, if we did not indicate our overriding concern with the erosion of tribal sovereignty embedded in the Act. Tribes are not jurisdictions of the state. Rather, throughout American history, tribes have been recognized as having nation status. The Adam

Walsh Act implies a reduction in tribal sovereignty by delegating to the state enforcement of the Act on tribal lands and substituting state government for an historical federal government role.

If you have questions or would like to discuss any of these points further, please contact Kay Chopard Cohen at 202-448-1722 or kcohen@ncja.org.

Sincerely,

Cabell C. Cropper
Executive Director

Rosengarten, Clark

From: Rogers, Laura on behalf of GetSMART
Sent: Tuesday, July 31, 2007 5:07 PM
To: Rosengarten, Clark
Subject: FW: Docket No. OAG 121: comments to Proposed Guidelines (SORNA)
Attachments: Comments to AWA guidelines.pdf

From: AMY BORROR [mailto:Amy.Borror@OPD.OHIO.GOV]
Sent: Tuesday, July 31, 2007 2:40 PM
To: GetSMART
Subject: Docket No. OAG 121: comments to Proposed Guidelines (SORNA)

Director Rogers,

Attached to this email as a pdf file, please find comments regarding the Proposed Guidelines for Sex Offender Registration and Notification, Docket No. OAG 121.

Please do not hesitate to contact me if you have questions or need additional information.

Thank you for your consideration of these comments.

Sincerely,
Amy Borror
Public Information Officer
Office of the Ohio Public Defender
614-644-1587

July 31, 2007

Director Laura Rogers
U.S. Dept. of Justice, SMART Office
810 7th Street, NW
Washington, DC 20531
Transmitted via email: GetSMART@usdoj.gov

Re: Docket No. OAG 121: Comments on the Proposed Guidelines for Sex Offender Registration and Notification

Dear Director Rogers:

Thank you for the opportunity to submit comments to the Proposed National Guidelines for Sex Offender Registration and Notification, which guide Ohio and other states as they work to implement the Adam Walsh Child Protection and Safety Act of 2006.

The Ohio General Assembly spent much of this year working on Senate Bill 10, which is intended to implement the Adam Walsh Act in Ohio. Most of the debate in the legislature and among interested parties centered around three issues: the retroactive application of the bill's classification, registration, and notification requirements; the inclusion of juvenile sex offenders on a public registry; and the question of what constitutes "substantial" compliance with the guidelines.

Several lengthy committee hearings and meetings of interested parties resulted in a final version of the legislation that was marginally more acceptable to the various interested parties than was the as-introduced version of the bill. The final version, however, signed into law on June 30, continues to be laden with issues that will be challenged in Ohio's court system for many years to come.

We offer suggested changes to the Proposed Guidelines below. We believe these changes will assist other states in their legislative processes as they work to implement the Adam Walsh Act, and will result in legislation and registration systems that are less likely to face lengthy and costly legal challenges.

Retroactivity

The Adam Walsh Act itself is not retroactive. Instead, it delegates authority to the Department of Justice to interpret and administer the Act's registration provisions, and to determine the applicability of those provisions to offenders who were convicted prior to the enactment of the Act.[1] The Guidelines for implementation of the Adam Walsh Act require that the Act be applied retroactively to persons with convictions for sex offenses who are incarcerated or under supervision; who are already subject to a pre-existing sex offender registration system; and who re-enter the justice system because of another crime, regardless of whether it is a sex offense.

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[1] 42 U.S.C. Sec. 16913(d) provides that "[t]he Attorney General shall have the authority to specify the applicability of the requirements of this subchapter to sex offender convicted before July 27, 2006 or its implementation in a particular jurisdiction, and to prescribe rules for the registration of any such sex offenders and for other categories of sex offenders who are unable to comply with [the initial registration provisions] of this section."

Congress did not mandate that all sex offenders be reclassified, and certainly did not require that those offenders who have completed their period of registration be re-registered under the new provisions of the Adam Walsh Act. Applying the Adam Walsh Act's classification, registration, and notification requirements retroactively as outlined in the Proposed Guidelines will unnecessarily subject states to lengthy and expensive constitutional challenges that could be avoided simply by applying the Act prospectively only.

Retroactive application of the Adam Walsh Act presents separation of powers issues, as state legislatures, acting on a directive handed down by the executive branch of the federal government, will be reversing decisions made by judges. In Ohio, the retroactive application of Senate Bill 10 means that thousands of legal decisions of trial court judges, to not label offenders as sexual predators, will be overturned by the legislature—simply because the offenses underlying those decisions, which were committed many years ago, fall into a certain Tier, as defined by the Act.

Plea deals that predate the enactment of the Adam Walsh Act and states' implementation legislation raise additional legal problems. There are thousands of offenders in Ohio who, since the enactment of Ohio's current sex offender registration system ten years ago, have plead guilty to sex offenses. Many of them plead guilty to offenses that would, under the Adam Walsh Act, be Tier III offenses. But those offenders were labeled, by a judge, as sexually oriented offenders (similar to Tier I), not as sexual predators (similar to Tier III). In many cases, that label of sexually oriented offender was part of a plea bargain, agreed to by the State of Ohio, through the office of the county prosecutor.

Those plea deals are contracts: the defendant agreed to give up his or her right to trial and agreed to go to prison, and in exchange, the State agreed that the defendant would not be labeled a sexual predator. But now, with Senate Bill 10 being applied retroactively, thousands of offenders will be notified that, because of the offense to which they plead guilty, they are being reclassified as Tier III offenders, with registration and verification duties lasting a lifetime. The State of Ohio, which years ago entered into these contracts and agreed to less-severe labels, is now unilaterally altering thousands of contracts. And, as a result, making onerous changes in thousands of people's lives, changes that were neither anticipated nor necessary.

Ohio's current sex offender registration system was also applied retroactively when it was first established. That retroactive application was later found to be constitutional by the Supreme Court of Ohio, which declared the registration requirements to be remedial, as opposed to punitive. But most of the factors that made that legislation remedial are missing from Ohio's implementation of the Adam Walsh Act: the ability of a court to remove a sexual predator label; the right of an offender to live anywhere in the community; limited notification, now that all offenders are on internet registries; and procedural safeguards, including a court hearing, with counsel, the right of confrontation, the right to present witnesses and experts, the requirement that the State have the burden of proving not only that a person committed a sexually oriented offense, but also that he or she is likely to commit another sexually oriented offense in the future, and the right to appeal an adverse ruling.

The cost to states and their court systems of the retroactive application of the Adam Walsh Act could take many forms: class action lawsuits; thousands of motions to withdraw pleas;

lawsuits for damages after offenders lose their jobs, are forced to move, or appear on an internet registry after being told they would not. And, perhaps most costly, defendants' unwillingness to enter into future plea agreements, knowing that at any time, any branch of government at any level may choose to breach the State's obligations in that contract.

The retroactive application of the Adam Walsh Act's classification, registration, and notification requirements runs afoul of fundamental fairness. It will unduly burden court systems and prove costly for the states. Congress, with its one-sentence delegation of authority to the Department of Justice, surely did not intend to levy such a cost on the states and their courts.

Accordingly, we urge you to adopt guidelines that will allow states to apply the Act prospectively only, and to deem those states to be in substantial compliance with the implementation requirements of the Adam Walsh Act.

Juvenile offenders

This year marked the 40th anniversary of *In re Gault*, the landmark U.S. Supreme Court decision that granted many basic due process rights to children in juvenile court, including the right to advance notice of the charges, the right to a fair and impartial hearing, and the right to be represented by counsel. But *Gault* did not grant full due process protections to juveniles facing delinquency complaints. Notably absent are a child's right to a grand jury determination of probable cause and the right to an open and speedy trial by jury. And, at least in Ohio, juveniles have yet to fully realize the promises of *Gault*. A recent study found that two-thirds of children facing unruly or delinquency complaints are not represented by counsel when they appear in Ohio's juvenile courts.[2]

The Proposed Guidelines for the implementation of the Adam Walsh Act recognize that the burdens of sex offender registration and notification should not attach when full due process protections have not been guaranteed. For convictions arising from Indian tribal court and foreign court proceedings, the Guidelines provide:

> It is recognized...that Indian tribal court proceedings may differ from those in other United States jurisdictions in that the former do not uniformly guarantee the same rights to counsel that are guaranteed in the latter. Accordingly, a jurisdiction may choose not to require registration based on a tribal court conviction resulting from proceedings in which...the defendant was denied the right to assistance of counsel...
>
> ***
>
> SORNA instructs that registration need not be required on the basis of a foreign conviction if the conviction "was not obtained with sufficient safeguards for fundamental fairness and due process for the accused..."

The Proposed Guidelines fail to acknowledge, however, that only limited due process protections are offered to children in juvenile court. By placing juvenile sex offenders age

[2] This study compared the number of unruly and delinquency cases reported by the Supreme Court of Ohio's *2004 Ohio Courts Summary* to the number of unruly and delinquency cases reimbursed by the Office of the Ohio Public Defender during that same calendar year. The complete study can be found online at: http://www.opd.ohio.gov/press/pr_03_09_06.htm.

14 and older on a public registry, the Adam Walsh Act imposes an adult sanction on juvenile defendants. It treats a select group of children who appear in juvenile court differently than other children who appear in juvenile court; it treats them more like adult sex offenders than like children. But it does so without regard to the limited due process protections offered to children in juvenile court.

The Proposed Guidelines recognize that lifetime inclusion on a public registry is far too severe a sanction to impose on someone whose full due process protections have not been guaranteed during Indian tribal court and foreign court proceedings. That recognition should be extended to children in juvenile court.

Accordingly, we urge you to adopt guidelines that will allow states to include on the public registry only those juveniles who have been provided full due process protections, and to deem those states to be in substantial compliance with the implementation requirements of the Adam Walsh Act.

The juvenile court system is based on the fundamental belief that children can be rehabilitated. Indeed, juveniles' inherent amenability to rehabilitation has been recognized by the United States Supreme Court. In its 2005 opinion in *Roper v. Simmons*, which declared the death penalty for juveniles unconstitutional, the Court stated:

> The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character. From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed.

Research tells us that juvenile sex offenders are especially amenable to treatment. According to the Ohio Association of County Behavioral Health Authorities, research shows that "with treatment, supervision and support, the likelihood of a youth committing subsequent sex offenses is about 4–10 percent."[3] And a compilation of 43 follow-up studies of the re-arrest rates of 7,690 juvenile sex offenders found an average sexual recidivism rate of 7.78 percent,[4] which is significantly lower than the recidivism rate for adult offenders.

The inclusion on a public registry of all children who are adjudicated delinquent of certain sex offenses is fraught with problems that undermine both the history of the juvenile court system and the purpose of the Adam Walsh Act. It ignores the very foundation of this country's juvenile court system, a belief—confirmed by scientific research—that children can and should be rehabilitated. And it dilutes the effectiveness of the public registry as a public safety tool, by flooding it with thousands of juvenile offenders, 90–96 percent of whom will never commit another sex offense.

Juveniles who are amenable to treatment and who are successfully rehabilitated have no place on a public registry of violent adult sex offenders. Those who interact with each child individually—specifically, juvenile court personnel working in conjunction with treatment

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[3] *Juvenile Sex Offenders*. Behavioral Health: Developing a Better Understanding. Vol. Three, Issue I.
[4] Michael F. Caldwell, *What We Do Not Know About Juvenile Sexual Reoffense Risk*. Child Maltreatment, Vol. 7, No. 4, Sage Publication, November 2002 (291-302).

providers—should continue to be allowed to determine whether a child's offense was a youthful indiscretion, a manifestation of a mental illness or other behavioral health problem, or a sign of a child who is not amenable to treatment and who poses an ongoing threat to public safety.

Children who serve traditional juvenile dispositions and are successfully rehabilitated should be exempted from the public registry requirements of the Adam Walsh Act. Doing so would improve upon the overall function of the Act, by both maintaining the Act's essential elements and protecting the juvenile who is redeemable. Doing so would maintain the essence of the Adam Walsh Act, but separate from it the aspects that are inconsistent with the juvenile court system's efforts to rehabilitate juveniles. Doing so benefits not just the juvenile, but the system.

Accordingly, we urge you to adopt guidelines that will allow states to include on the public registry only those juveniles who have been found to be not amenable to treatment, and to deem those states to be in substantial compliance with the implementation requirements of the Adam Walsh Act.

Substantial compliance

One question in particular was repeated throughout the legislative process as the Ohio General Assembly deliberated over Senate Bill 10: what, exactly, constitutes substantial compliance with the guidelines for implementation? The Adam Walsh Act requires "substantial" implementation, and the Proposed Guidelines purport to require "substantial" compliance. But the definition of "substantial" is unclear, and leaves states uncertain about their options to tailor the Act to their systems and needs.

The Proposed Guidelines offer that the "'substantial' compliance standard...contemplates that there is some latitude to approve a jurisdiction's implementation efforts, even if they do not exactly follow in all respects the specifications of SORNA or these Guidelines." However, the Guidelines also say that the Adam Walsh Act presents a set of *minimum* national standards, and that the Guidelines set a floor, not a ceiling, for states' registration systems.

These two statements, taken together, imply that a state's implementation efforts do not have to "follow in all respects" the Adam Walsh Act or the Guidelines, but only if the state chooses to exceed the requirements of the Act or the Guidelines. These two statements seem to define "substantial" compliance as something at or above 100 percent compliance. That, of course, is an illogical and unfounded definition of "substantial," and clearly goes beyond what is required by the Adam Walsh Act.

In order for the Guidelines to be a useful tool for states as they work to implement the Adam Walsh Act, a clearer definition of substantial compliance is needed. States need the Guidelines to match the language and intent of the law in order to know how to implement the Adam Walsh Act. As they are currently written, the Proposed Guidelines imply that nothing less than strict compliance will be sufficient, while the Act requires only the substantial implementation of the federal law.

We urge you to adopt clear guidelines that will allow states to substantially comply with the Adam Walsh Act not only by blindly enacting federal mandates, but also by crafting good public policy that both achieves the Act's goals and is tailored to the unique systems and public policy goals of each state.

Thank you for your thoughtful consideration of these comments. We will be happy to assist you as you work to revise the Proposed Guidelines for the implementation of the Adam Walsh Act.

Sincerely,

The Office of the Ohio Public Defender
David H. Bodiker, Director

Franklin County (Ohio) Public Defender Office
Yeura R. Venters, Director

National Juvenile Justice Network
Sarah Bryer, Director

Juvenile Justice Coalition of Ohio
Sharon Weitzenhof, Director

Alternatives for Youth
Linda M. Julian, Director

Children's Law Center, Inc.
Kim Brooks Tandy, Director

cc: Ohio Congressional delegation
Governor Ted Strickland

The Mid-Atlantic Juvenile Defender Center

District of Columbia • Maryland • Puerto Rico • Virginia • West Virginia

ensuring excellence in juvenile defense
and promoting justice for all children

July 25, 2007

VIA ELECTRONIC AND FIRST-CLASS MAIL

Laura L. Rogers, Director
SMART Office—Office of Justice Programs
U.S. Department of Justice
810 7th Street NW
Washington, D.C. 20531

Re: OAG Docket No. 121--Comments on Proposed Guidelines to Interpret and Implement the Sex Offender Registration and Notification Act (SORNA)

Dear Ms. Rogers:

As the U.S. Department of Justice considers how best to interpret and implement the Sex Offender Registration and Notification Act of 2006 (SORNA), the Mid-Atlantic Juvenile Defender Center takes this opportunity to express our general opposition to the application of SORNA to youth adjudicated within the juvenile court system, and our particular concerns with the current Proposed Guidelines.

The Mid-Atlantic Juvenile Defender Center (MAJDC) is a multi-faceted juvenile defense resource center serving the District of Columbia, Maryland, Virginia, West Virginia, and Puerto Rico. We are committed to working within communities to ensure excellence in juvenile defense and justice for all children. We are a regional affiliate of the National Juvenile Defender Center in Washington, D.C. Part of our work includes training juvenile defenders and we have held trainings on the issue of handling juvenile sex offense cases.

Application of the Guidelines to Youth is Contrary to the Research, Including Research Sponsored by the U.S. Department of Justice

The research, including research sponsored by the U.S. Department of Justice, does not support the application of SORNA to youth.

According to the National Center of Sexual Behavior of Youth (NCSBY), a training and technical assistance center developed by the Office of Juvenile Justice and Delinquency Prevention and the Center on Child Abuse and Neglect at the University of Oklahoma Health Sciences Center, juvenile sex offenders engage in fewer abusive behaviors over shorter periods of time and have less aggressive sexual behavior.[i] In addition, the recidivism rate among juvenile sex offenders is substantially lower than rates for other delinquent behavior (5-14% vs. 8-58%). In fact, more than 9 out of 10 times the arrest of a youth for a sex offense is a one-time event, even thought the youth may be apprehended for non-sex offenses typical of other juvenile delinquents.[ii]

The Center also found that youth are more responsive to treatment than adults and that they are less likely than adults to re-offend given appropriate treatment. In other words, youth whose

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conduct involves sexually inappropriate behavior—even when assaultive—do not pose the same threat in terms of duration or severity to public safety as do adults.

All of the above competently argues against the inclusion of youth in public sex offender registries for 25 years to life.

Application of the Guidelines to Youth Will Interfere with Effective Treatment and Rehabilitation

SORNA as applied to youth is contrary to the core purposes, functions and objectives of our nation's juvenile justice systems in that it strips away the confidentiality and the overall rehabilitative emphasis which form the basis of effective intervention and treatment for youthful offenders.

It cannot be too strongly emphasized that youth implicated by the Act have not been convicted of a criminal offense, by deliberate action of the states' legislatures and prosecuting authorities. Rather, they have been adjudicated delinquent and, by virtue of that adjudication, have been found to be amenable to treatment and deserving of the opportunity to correct their behavior apart from the stigma and perpetual collateral consequences that typically accompany criminal convictions. Subjecting juveniles to the mandates of SORNA interferes with and threatens child-focused treatment modalities and may significantly decrease the effectiveness of the treatment.

SORNA as applied to youth will have a chilling effect on the identification and proper treatment of youth who exhibit inappropriate sexual behavior. As opposed to helping to hold their child accountable and seek appropriate children, parents will be more inclined to hide their child's problem and not seek help when they learn that their child may be required to register for life as a sex offender.

In addition, public registration and community notification requirements can complicate the rehabilitation and treatment of these youth. Youth required to register have been known to be harassed at school, forcing them to drop out.[iii] The stigma that arises from community notification serves to "exacerbate" the "poor social skills" many juvenile offenders possess,[iv] destroying the social networks necessary for rehabilitation.[v]

Application of the Guidelines to Youth Will Put Youth at Risk of Exploitation

SORNA as applied to youth is not in accord with the Act's public safety objective of "protect[ing] the public from sex offenders and offenders against children," in that it will expose these youth to adult offenders who have not sought or benefited from treatment.

Just as members of the public will be able to access the registry via the Internet and identify offenders in any and every community, adults who are inclined to exploit and abuse children and youth will be able to access the registry via the Internet and identify adjudicated youth in any and every community. Moreover, the youth's exposure will not be limited to the Internet. Pursuant to SORNA, four times a year these youth will have to report to a centralized location to provide certain updated information--bringing them into the physical presence of others and making abusive and exploitative actions against them much easier for adults still engaging in sexually inappropriate and abusive behavior.

The Guidelines Should Allow for Judicial Discretion in Cases of Youth Adjudicated as Juveniles

If the Attorney General persists that SORNA be applied to youth adjudicated within the juvenile court system, the Department should allow judges to exercise some discretion when determining whether and how a youth must register as a sex offender.

To date, all 50 states and the District of Columbia allow for the prosecution of serious youthful offenders in adult criminal court. Five states (HI, KS, ME, MO, NH) grant authority to the judge to make the decision to transfer a youth to adult court after a finding of probable cause and a determination that the juvenile court system cannot properly address his or her treatment needs. Fourteen states (AZ, AR, CA, CO, FL, GA, LA, MI, MT, NE, OK, VT, VA, WY) give prosecutors, instead of judges, the discretion to decide whether to charge certain juveniles in adult courts. Twenty-nine states (AL, AK, AZ, CA, DE, FL, GA, ID, IL, IN, IA, LA, MD, MA, MN, MS, MT, NV, NM, NY, OK, OR, PA, SC, SD, UT, VT, WA, WI) automatically transfer juvenile cases for certain types of crimes. Only two states (NY, NC) have lowered the age at which children are considered adults in the criminal system, transferring all crimes by 16- or 17-year-olds to adult courts.[vi]

Thus, if a youth is being adjudicated within the juvenile court system, the state legislature, the prosecutor and/or the judge have made a determination (1) that the youth's offense does not warrant criminal prosecution, (2) that the youth is entitled to the protections of the juvenile system and, above all, (3) that the youth and the public are best served within the juvenile system. The fact that the court has retained jurisdiction argues against indiscriminate registration requirements and instead supports a policy of judicial discretion on a case-by-case basis subject to certain criteria.

For example, of the states within the Mid-Atlantic region, Virginia currently allow for judicial discretion when determining whether a youth adjudicated within the juvenile court system is required to register as a sex offender. If a juvenile adjudicated delinquent is 13 years of age or older, the court may require the juvenile to register if, in the courts discretion and on motion of the Commonwealth's Attorney, the court finds that the circumstances of the offense require offender registration.

States that allow for the exercise of judicial discretion in cases of youth who have been adjudicated within the juvenile court system should be deemed to have substantially implemented the SORNA standards with respect to the Registration Requirements and Community Notification Standards.

The Guidelines Should Waive Public Registration and Community Notification Requirements for Youth Adjudicated within the Juvenile Court System

If the Attorney General persists that youth adjudicated within the juvenile court system register as sex offenders under SORNA, the Guidelines should allow for the creation and/or maintenance of a separate juvenile registry that is accessible by the relevant authorities but not by the general public, and should allow for the states, via the courts or some designated agency, to determine whether community notification is required. Such allowances will serve the public safety purposes of the Adam Walsh Act while helping youth in treatment and innocent family members maintain some privacy.

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SORNA as applied to youth will disrupt families and communities across the nation because SORNA does not just stigmatize the youth; it stigmatizes the entire family, including the parents and other children in the home. In the overwhelmingly majority of cases, the address and telephone number the youth has to provide will be the family's home address and telephone number. The school information the youth has to provide will be the same school currently or soon-to-be attended by a sibling. The vehicle information the youth has to provide to be registered in one or both of the parents' names.

Similarly, the mandates and restrictions associated with SORNA impact not only the youth, but the entire family, particularly in terms of where registrants can live, e.g., prohibitions against living within so many feet of a school or a park.

In its efforts to support families as the fabric of strong communities, the federal government must be careful not to promulgate policies and promote practices that unnecessarily introduce or exacerbate tensions in the home, the school and between members of the same community, particularly where those tensions center on children and families who need and can benefit from appropriate treatment.

Similarly, the mandates and restrictions associated with the Guidelines will impact not only the youth, but the entire family, particularly in terms of where the family is permitted to live, e.g., prohibitions against living within so many feet of a school or a park.

Alternatively, the Guidelines should allow for the creation and/or maintenance of juvenile registries that are accessible by the relevant authorities but not accessible by the public. Idaho, Ohio, Oklahoma and South Carolina, for example, currently maintain non-public registries for youth adjudicated within the juvenile court system.

States that create and maintain juvenile registries such as the one described above should be deemed to have substantially implemented the SORNA standards with respect to the Registration Requirements and Community Notification Standards.

Conclusion

The Mid-Atlantic Juvenile Defender Center supports efforts to hold offenders accountable, protect vulnerable populations and improve the overall public safety for communities across the nation. For the aforementioned reasons, however, we believe that the Act and the Proposed Guidelines negatively and unnecessarily impact the short- and long-term rehabilitation of youth adjudicated within the juvenile court system. We therefore urge the Attorney General to wholly or, alternatively, to limit their application in the ways articulated above.

Thank you for the opportunity to comment on the Proposed Guidelines to interpret and implement the Sex Offender Registration and Notification Act, and we trust that our comments will be given serious and thoughtful consideration.

Respectfully,

Melissa Coretz Goemann

Director, Mid-Atlantic Juvenile Defender Center

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[i] National Center on Sexual Behavior of Youth, Center for Sex Offender Management (CSOM) and U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, (2001). *Juveniles Who Have Sexually Offended; A Review of the Professional Literature Report;* available at http://www.ojjdp.ncjrs.org/.

[ii] Zimring, F.E. (2004). An American Travesty. University of Chicago Press.

[iii] Freeman-Longo, R.E. (2000). Pg. 9. *Revisiting Megan's Law and Sex Offender Registration: Prevention or Problem.* American Probation and Parole Association. http://www.appa-net.org/revisitingmegan.pdf.

[iv] Garfinkle, E., Comment, 2003. *Coming of Age in America: The Misapplication of Sex-Offender Registration and Community Notification Laws to Juveniles.* 91 California Law Review 163.

[v] Ibid.

[vi] This past June, Connecticut raised the age of original juvenile court jurisdiction to age 17.

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Rosengarten, Clark

From: Rogers, Laura on behalf of GetSMART
Sent: Monday, August 06, 2007 10:50 AM
To: Rosengarten, Clark
Subject: FW: Docket No. OAG 121
Attachments: NACDL - OAG 121 SORNA.doc

From: [redacted]
Sent: Tuesday, July 31, 2007 5:55 PM
To: GetSMART
Subject: Docket No. OAG 121

TO: Laura L. Rogers
Director, SMART Office, Office of Justice Programs,
United States Department of Justice

Attached please find comments on behalf of the National Association of Criminal Defense Lawyers regarding the proposed National Guidelines for Sex Offender
Registration and Notification, Docket No. OAG 121. Thank you for your consideration.

Kyle O'Dowd, Legislative Director
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NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

Attn: Laura L. Rogers
SMART Office
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Via email: getsmart@usdoj.gov

Re: OAG Docket No. 121

NACDL Comments on the Attorney General's National Guidelines for Sex Offender Registration and Notification

I. Introduction

The National Association of Criminal Defense Lawyers ("NACDL") is a nationwide, non-profit, voluntary association of criminal defense lawyers founded in 1958 to improve the quality of representation of the accused and to advocate for the preservation of constitutional rights in criminal cases. NACDL has a membership of more than 12,800 attorneys and 92 state, local and international affiliate organizations with another 35,000 members including private criminal defense lawyers, public defenders, active U.S. military defense counsel, law professors and judges committed to preserving fairness within America's criminal justice system.

On February 24, 2007, NACDL issued a comprehensive statement on sex offender legislative policy. NACDL opposes sex offender registration and community notification laws but also believes that if such laws are passed they should classify offenders based upon true risk, with full due process of law. Community notification provisions should be reserved for offenders who are at a high risk to re-offend. Unfortunately, with the passage of the Adam Walsh Child Protection and Safety

Act of 2006 (Adam Walsh Act), Congress went in a different direction. The Adam Walsh Act includes the Sex Offender Registration and Notification Act (SORNA). SORNA sets forth a federal supervisory program that, if implemented by the states, is likely to significantly de-stabilize offenders, cause substantial confusion over registration and notification requirements and eventually make our communities less safe.

Unfortunately, in enacting SORNA Congress failed to recognize several important facts about sex offenders. Sex offenders, as a class, exhibit low recidivism rates and are less likely to re-offend than other convicted criminals[1]. Additionally, research suggests that community notification laws do little to reduce recidivism[2]. At least one study found that "the passage of sex offender registration and notification laws have had no systematic influence on the number of rapes committed" in the jurisdictions which were studied[3]. At the same time sound research demonstrates that sex offenders are not a homogeneous group[4] and come from a wide range of offenders including the rare but highly dangerous treatment-resistant offender as well as the more common offender who, once convicted, is unlikely to commit additional offenses. Requiring the same registration and notification provisions for all sex offenders diminishes the ability of the community to ascertain the truly dangerous sex offender. It also undermines the ability of the non-dangerous sex offender to maintain employment, family ties, and treatment programs. Many sex offenders report negative consequences, including physical assaults, resulting from registration and notification programs[5]. NACDL believes that a determination of offender risk must be based upon the individual characteristics of the offender and not solely on the offense for which the offender was convicted. In fact, many states now have registration and notification programs that are tiered upon the basis of individual risk assessment studies performed by competent mental health professionals. In this regard, SORNA is a step in the

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[1] *See,* Bureau of Justice Statistics, *Recidivism of Sexual Offenders Released From Prison in 1994,* November, 2003, State of Washington Sentencing Guideline Commission, *Special Sex Offender Sentencing Alternative Report (2004),* State of Ohio, *Ten Year Recidivism Follow Up of 1989 Sex Offender Releases* (2001). *See also,* Hanson R.K. and Morton Bourgon, R.K., *Predictors of Sexual Recidivism: An Updated Meta-Analysis,* Public Safety and Emergency Preparedness Canada (2004); Harris and Hanson, *Sex Offender Recidivism: A Simple Question* (2004); Hanson, R.K. and Bussiere, M., *Predicting Relapse: A Meta-Analysis of Sex Offender Recidivism Studies,* Journal of Consulting and Clinical Psychology (1998).

[2] *See,* Welchans, S., *Megan's Law: Evaluations of Sexual Offender Registries,* 16 Criminal Justice Policy Review, 123-140 (2005)

[3] *See,* Jeffrey T. Walker, et al., *The Influence of Sex Offender Registration and Notification Laws in the United States,* available at: http://www.acic.org/statistics/Research/SO_Report_Final.pdf#search=%22Walker%2C%20J.T.%20AND%20sex%20offender%20registration%22

[4] *See,* Lisa L. Sample and Timothy M. Bray, *Are Sex Offenders Different? An Examination of Re-Arrest Patterns,* 17 Crim. Justice Policy Rev. 83 (2006).

[5] *See,* Jill S. Levenson and L. Cotter, *The Impact of Megan's Law on Sex Offender Reintegration,* 21 Journal of Contemporary Criminal Justice 49 (2005); Richard Tewksbury, *Collateral Consequences of Sex Offender Registration,* 21 Journal of Contemporary Criminal Justice 67 (2005).

wrong direction. SORNA and the regulations proposed in this docket will cause substantial confusion in the states and impose exorbitant costs for states to convert to a less safe system of registration and community notification.

Nonetheless, NACDL recognizes that the Adam Walsh Act and SORNA have become law. In these comments NACDL will highlight portions of the proposed regulations that ignore certain important constitutional rights or are otherwise inappropriate for an effective and fair registration and notification system.

II. Fifth Amendment Rights

The proposed regulations fail to allow the exercise of important Fifth Amendment privileges. The Fifth Amendment protects individuals from compelled self incrimination. The proposed regulations do not recognize or provide a means for an individual to exercise Fifth Amendment rights. The proposed regulations do not require the registration authority to advise a registrant of the Fifth Amendment right not to answer any question that may tend to cause self-incrimination. Indeed, several areas of the proposed regulations suggest that uncovering prior criminal activity of the registrant is a goal of the regulations. Additionally, certain types of registration information required under the Attorney General's "expansion authority," will compel information from the registrant that will cause self-incrimination. For instance, the proposed regulations require registrants to provide their social security numbers as well as all "purported" social security numbers. The proposed regulation specifically recognizes that such social security numbers may be false. Admitting to the use of a false social security number can expose an individual to prosecution for a number of crimes including identity theft. Similarly, the Attorney General exercises his "expansion authority" to require a homeless registrant to provide information identifying where he "habitually lives." In many jurisdictions providing such information will subject the homeless registrant to criminal prosecution for offenses such as vagrancy, loitering, public urination, indecent exposure and the like.

The regulations should require that offenders who are required to register be advised that they are not required to disclose information that may tend to incriminate themselves. Additionally the regulations should clearly state that the exercise of the Fifth Amendment privilege cannot be the basis of a criminal prosecution. Alternatively the regulations should require that the registrant be immunized from prosecution based upon information provided pursuant to the proposed regulations.

III. Principles of Federalism

The regulations, as written, infringe upon important state rights and disregard the notion that our legal system is based upon principles of federalism, which value state sovereignty especially in the area of criminal justice. The regulations disregard state sovereignty in areas pertaining to pardons, annulments, and expungement of convictions; juvenile delinquency; and state legislative discretion as to appropriate sentencing.

Many states, either constitutionally or via legislative enactment, have procedures that permit the annulment or expungement of criminal convictions for reasons other than actual innocence. Likewise, many state governors and pardon boards have the authority to pardon criminal convictions for reasons other than innocence. In most cases such annulments or pardons are based upon recognition that the former offender has been rehabilitated. State constitutions and annulment statutes place a high value on rehabilitation and the need to remove the stigma of a criminal conviction in certain rare but important cases. Section IV, A, of the proposed regulations specifically requires that a state continue to register a former offender regardless of the annulment and pardon laws of the jurisdiction except in cases where the former offender is pardoned on the ground of innocence. SORNA does not require that former offenders who are pardoned or whose convictions are annulled or expunged be included with those who must register. The proposed regulations violate fundamental notions of federalism and are well beyond the authority granted to the Attorney General to promulgate such regulations.

Similarly, the proposed regulations violate fundamental notions of federalism in the juvenile delinquency area. Juvenile delinquency is an area of the criminal justice system that, for the most part, is left to the exercise of state authority. Many states recognize the fact that juveniles are different than adults and reflect such differences in their juvenile justice systems. In many states, delinquency is not considered to be a criminal act and great emphasis is placed on rehabilitative efforts and confidentiality. In most states a juvenile delinquency finding is not considered to be a criminal conviction. Applying registration and community notification requirements to delinquent children is likely to substantially interfere with state systems designed for the rehabilitation of children. In addition registration and community notification put those children who are required to register at risk for sexual exploitation by others as their identifying information will be freely available in the public domain. In addition to the risk of exploitation, the registration and community notification provisions will unnecessarily stigmatize children and

impose impossible challenges for such children in school and in the community. In creating juvenile justice systems most states have recognized the importance of providing a rehabilitative process that is best approached in confidence. The proposed regulations disregard this important policy concern which has already been addressed in virtually every state. The proposed regulations violate fundamental notions of federalism and will likely cause unnecessary harm to a significant number of children[6]. The proposed regulations should not include registration of children. At the very least the proposed regulations should be amended to eliminate the community notification and web site requirements for delinquent children.

Another area which is constitutionally left to the sound discretion of the states is sentencing for criminal conduct. The proposed regulations, as required by the statute, lay out a specific requirement that the maximum sentencing penalty for a failure to comply with SORNA be at least greater than one year. This provision interferes with the rights of individual states to legislate appropriate criminal punishment. It is also unwise in that the complexities of the proposed regulations may force many former offenders into a technical default which is neither knowing nor intentional but nonetheless exposes them to felony prosecution.

IV. The Proposed Regulations Exceed the Statutory Authority Granted By SORNA And Will Not Foster the Real Purpose of the Legislation

The Attorney General, relying on SORNA § 114 (a) (7), expands the types of registration information that must be provided beyond that required in the statute. The "expansion authority" exercised by the Attorney General is well beyond the authority permitted by the statute, will not foster the goals of the legislation, and will subject former offenders to exploitation, vigilantism, shame and ridicule. The Attorney General indicates that he has exercised his "expansion authority" to require additional information to be provided by persons required to register as sex offenders. However, the exercise of this authority is unnecessary to the purpose of the Adam Walsh Act and is unwise policy. The stated purpose of the Adam Walsh Act is to protect the public by creating a comprehensive system for the registration of sex offenders. The act was not passed to impose a non-judicial probation or supervisory status over persons who have been convicted of sex offenses. The "expansion authority" exercised by the Attorney General to

[6] The efficacy of juvenile registration and community notification is further diminished when one considers the fact that the recidivism rate of juvenile sex offenders is very low. *See,* National Center on Sexual Behavior of Youth, Center for Sex Offender Management and U.S. Department of Justice, Office of Juvenile Justice and Delinquency Protection, (2001). *Juveniles Who Have Sexually Offended: A Review of the Professional Literature Report.* http://www.ojjdp.ncjrs.org.

require far more information than the statute requires does not enhance its purpose, which is simply to create a registry. The proposed regulations invoke the "expansion authority" to require the following information at the time of registration: remote identifiers (screen names and e-mail addresses); telephone numbers; "habitual living" places of offenders lacking fixed abodes; temporary lodging information; other employment information such as travel routes; professional licenses; additional vehicle, watercraft and aircraft information; and, date of birth.

Requiring such information will expose former offenders to exploitation, vigilantism and public shame and ridicule without any benefit to the establishment of a comprehensive system of registration. Requiring the provision of telephone numbers and dates of birth will subject former offenders to the very real possibility of identity theft. Providing information about where a homeless former sex offender may "habitually live" (e.g., a certain park bench or under a certain overpass) would expose that vulnerable individual to the likelihood of assault and battery by vigilantes in the community. Similarly, former offenders may hold professional licenses that have nothing to do with children or sex (e.g., electrician or plumber's license) and the only purpose of publishing such information is to shame and ridicule the former offender in his community. Requiring such information endangers the public rather than making it safer. Social science research demonstrates that sex offenders are more likely to re-offend when they are put into de-stabilizing situations[7]. The additional information required under the Attorney General's "expansion authority" serves to de-stabilize former offenders and may render them unemployed and unemployable, subject to vigilantism and other types of exploitation. The "expansion authority" should not be used to require this information. At the very least the regulations should mandate that none of the information obtained via the "expansion authority" shall be made available to the public in any format.

V. The Proposed Regulations Fail to Require Fundamental Due Process

The proposed SORNA regulations fail to require states to provide any due process protections to registrants so that they can contest their designation as a Tier I, Tier II, or Tier III offender. SORNA § 118(e) requires the states to include on their web sites, "instructions on how

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[7] *See,* Kruttschnitt, C., et al., *Predictors of Desistance among Sex Offenders: The Interaction of Formal and Informal Social Controls,* 17 Justice Quarterly 61 (2000); *See also,* Colorado Department of Public Safety, *Report on Safety Issues Raised by Living Arrangements for and Location of Sex Offenders in the Community,* 2004, http://dcj.state.co.us/odvsom ; Levenson, J. And Cotter, L., *The Impact of Sex Offender Residence Restrictions: 1000 Feet from Danger or One Step from the Absurd?,* 49 International Journal of Offender Therapy and Comparative Criminology 168 (2005).

to seek correction of information that an individual contends is erroneous." However, the proposed regulations do not mandate that a state have such a method. The proposal's only example of compliance with the act is a suggestion that a state web site might refer someone to the state agency responsible for correcting erroneous information. That suggestion is insufficient and fails to require states to protect the due process rights of registrants.

The system of registration and community notification contained in SORNA and in the proposed regulations is, in reality, a system of supervision of former offenders. It amounts to another method of probation, supervised release or parole. Therefore the regulations should require that each state must have a system for the proposed registrant to contest his or her designation as a sex offender accompanied by the full panoply of due process protections including, but not limited to, the right to be represented by counsel. The effects of registration and community notification on the registrant are severe and life altering. The registrant must have due process protections and the Attorney General ought to recognize and require such protections of all state programs.

VI. SORNA and the Proposed Regulations Are *Ex Post Facto* Laws Prohibited by Part I, Article 9 of the Constitution of the United States of America.

The proposed regulations apply SORNA retroactively in violation of Part I, Article 9 of the Constitution prohibiting the passage of *ex post facto* laws. NACDL has previously raised this concern in comments dated April 30, 2007, in OAG Docket No. 117. Those comments are incorporated by reference herein.

VII. Conclusion

In enacting the Adam Walsh Act and SORNA Congress succumbed to myths about sex offenders which are not supported by the existing scientific and social science research. The proposed regulations in this docket fail to protect important constitutional rights of sex offender registrants and go beyond the statutory authority granted to the Attorney General to promulgate regulations that implement a registration system. The system created by the confluence of SORNA and these regulations is a non-judicial system of supervised released coupled with the ever present specter of additional prison time for even the most minor of violations.

Rosengarten, Clark

From: Rogers, Laura on behalf of GetSMART
Sent: Tuesday, July 31, 2007 11:06 AM
Rosengarten, Clark
ject: FW: Docket No. OAG 121

ttachments: SORNA Comment NJOPD 072707.pdf

SORNA Comment
JOPD 072707.pdf..

-----Original Message-----
From: James Gilson [mailto:James.Gilson@opd.state.nj.us]
Sent: Monday, July 30, 2007 12:13 PM
To: GetSMART
Subject: Docket No. OAG 121

Kindly accept the attached for electronic filing in addition to our original copy mailed via UPS overnight Mail, tracking # 1Z F04 2R3 22 1001 534 6, on Friday July 27, 2007.

Thank you.

James A. Gilson, ADPD
Office of the Public Defender
Special Hearings Unit
Essex County Regional Office
Clinton Street, 12th Floor
Newark, New Jersey 07102

Phone# 973-877-1622
Fax# 973-877-1615
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JON S. CORZINE
Governor

State of New Jersey
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YVONNE SMITH SEGARS
Public Defender

July 27, 2007

Laura L. Rogers
Director, SMART Office
Office of Justice Programs
United States Department of Justice
810 7th Street NW.
Washington, DC 20531

Re: Comments Regarding the Sex Offender Registration and Notification Act (SORNA), Docket No. OAG 121

Dear Ms. Rogers:

Please accept these comments submitted by the New Jersey Office of the Public Defender in response to the United States Attorney General's proposed regulations promulgated pursuant to the *Sex Offender Registration and Notification Act* (hereinafter "SORNA"), 42 U.S.C. §§ 16901-16962.

Since 1996, the Office of the Public Defender has represented several thousand sexual offenders who have challenged their proposed public notification under New Jersey's Megan's Law. N.J.S.A. 2C:7-1 et. seq. Based on this and other experience working within the State's system for managing the post conviction lives of sex offenders, the Public Defender brings a thorough working knowledge of the field to this review of the Attorney General's

proposed regulations.

SORNA will require substantial changes to New Jersey's risk-based approach to sex offender notification. For the reasons outlined more fully below, we submit that the changes SORNA requires will dilute the value and undermine the effectiveness of New Jersey's sex offender management system. This scheme (continuously refined over the past decade) has become a highly successful means for safeguarding the public, and has led to recidivism levels more than 50% below the national average.[1] For this reason, we ask that states like New Jersey, which demonstrate highly effective risk-based sex offender notification programs, be given the discretion under SORNA's regulations to continue using a proven system to sex offender management.

In New Jersey, the Legislature developed a system of sex offender notification which places offenders into one of three tier, or risk, levels. Unlike the system required under SORNA, New Jersey's notification scheme does not base an offender's risk level on his offense. Rather, it is a risk-based system which evaluates an offender's re-offense risk based on factors that mental health professionals who specialize in sex offender management and treatment have identified as valid predictors of sex offender recidivism.

To formulate the risk evaluation, a risk assessment scale (the RAS) was developed by a panel of State selected experts who designed a matrix of thirteen static and variable factors which are weighted according to their predictive value. Among the thirteen factors developed for assessing a person's

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[1] Overall national levels of sex offender recidivism are reported at 13%. R.K. Hanson, & M. Bussiere, *Prediction relapse: A meta-analysis of sexual offender recidivism studies*, Journal of Consulting and Clinical Psychology *66 (2), 348-362* (1998). In a recently published study, however, the New Jersey's recidivism levels are stated as falling between 6%-8%, as much as 54% less than the national average. *See* K.M. Zgoba & L.M.J. Simon, *Recidivism Rates of Sexual Offenders up to 7 Years Later: Does Treatment Matter?* Criminal Justice Review, Volume 10, Number 2, 155-173 (2005).

risk level, the RAS considers the years an offender has lived in the community offense-free, the success of treatments received by the offender, whether a stable job has been obtained or education pursued, and if supportive supervised housing exists.[2] N.J.S.A. 2C:7-8. Other factors may also be considered such as whether the offender is so elderly or infirm as to pose a low or lower risk for reoffense. In addition, under New Jersey's system, offenders are provided an opportunity to challenge the state's risk assessment at a due process hearing. See Doe v. Poritz, 142 N.J. 1 (1995) (holding that under both State and Federal Constitutions, given the privacy and liberty interests at stake, sex offenders have a right to a hearing to challenge their risk determination. See also E.B. v. Verniero, 119 F.3d 1077 (3d. Cir. 1997).

In contrast to SORNA, New Jersey's sex offender notification corresponds to an offender's individualized risk assessment. Based upon an application of the RAS, a Tier one (low risk) offender has notification limited to local police.

Tier two offenders score higher on the RAS and are consequently subject to Tier one notice and to direct notification to schools, day care programs and community agencies and organizations which care for woman and children within a radius of the offender's home (typically one mile). In addition, in most cases Tier two offenders are subject to notice published on the State's sex offender Internet registry. There are three important exceptions to Internet notification which, in the view of New Jersey's Legislature, do not merit statewide notification. The exceptions include cases where a "sole offense" occurred and the offense was committed by a minor, or was a consensual or intra-familial offense. See N.J.S.A. 2C:7-13 (d).[3]

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[2] Attached, and marked as "Exhibit 1" is a copy of New Jersey's RAS.

[3] These three exceptions are supported by literature demonstrating that reoffense rates for these two groups are low. *See, e.g.*, United States Department of Justice, Center for Sex Offender Management (hereinafter "CSOM"), *Recidivism of Sex Offenders* (May 2001) (citing

Tier three (high risk) offenders are subject to Tier one and Tier two notification (including Internet notice in each case), and to direct notice to neighbors in the area where the offender resides.

Thus, New Jersey's notification scheme rewards offenders with narrower sex offender notification for compliance with factors shown to reduce recidivism levels. This has proven to be an essential motivational tool that contributes to maintaining the State's low recidivism levels. Our clients realize that to remain a Tier one or Tier two offender and thereby avoid the broadest forms of notification, they must remain in treatment, in school or employment, avoid substance abuse, and continue to remain free of any criminal offense. If these positive behaviors end, broader forms of community notification result.

Under SORNA, however, there is no incentive for offenders to change their lives and lower their risk level. Only Tier one offenders have the potential, depending upon state discretion, to avoid Internet notification. However, in New Jersey few persons will ever qualify as a Tier one because nearly every sex offense is "punishable" by a year or more of incarceration.

Under SORNA, therefore, nearly every sexual offender in New Jersey will be subject to identical state and national sex offender notification, including several thousand offenders the State previously determined did not require public notification due to their Tier one status. If this occurs and New Jersey is forced to abandon its risk-based approach, the State will lose a critically important and proven motivational device for reducing recidivism levels.

Additionally, unlike New Jersey's system, SORNA's sex offender notification will not include an offender's Tier level. Thus, it will provide

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study finding a 4% rate of recidivism for incest offenders) (all CSOM studies cited herein can be located at www.csom.org); Association for the Treatment of Sex Offenders ("ATSA"), *Letter Submitted to the Senate and House Appropriation Committees Commenting on Pending SORNA legislation*, (August 15, 2005) (describing the overall recidivism levels for juveniles to be 8%) (All

identical notification for thousands of offenders without indicating which pose the greatest risk. Experts agree, this will dilute the informational value of New Jersey's sex offender notification and create the misimpression that all offenders pose the same risk.[4] The result will predictably frustrate the remedial goals that our notification is designed to achieve.

For example, SORNA would have a person convicted of criminal sexual contact with a minor in New Jersey (N.J.S.A. 2C:14-3) for touching a juvenile over clothing on the buttocks on one occasion, years ago, with no history of any prior offense and with a successful record of treatment, treated as a Tier two sex offender. This offender, along with many others of a similar ilk, would be made subject to the same Internet notification with other offenders whose conviction and psychological profile make them a much greater risk. (For example a person convicted of aggravated sexual assault who received no treatment and had recently been discharged from prison.) Multiply this example by several thousand cases and it becomes apparent that SORNA's "one size fits all" approach is counterproductive and will unintentionally misinform the public that all sex offenders pose the same risk when this is clearly not the case.[5]

Also, under SORNA, New Jersey will not be able to continue to encourage incest victims to report sexual abuse by utilizing exceptions to public

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ATSA documents cited herein are available at www.atsa.com/public policy).

[4] See ATSA, *The Registration and Community Notification of Adult Sex Offenders, (2005)* (concluding the notification should occur "based on risk assessment and different strategies used based on tier level . . . so that citizens can make informed decisions regarding the large number of identified sexual offenders.")

[5] Formal studies conducted at the behest of or relied upon by both the federal government and the states confirm that sex offender re-offense rates vary greatly among different categories of offenders. See CSOM, *Myths And Facts About Sex Offenders* at 2 (Aug. 2000) (citing studies regarding recidivism rates and noting: "Persons who commit sex offenses are not a homogeneous group, but instead fall into several different categories. As a result, research has identified significant differences in re-offense patterns from one category to another."); ATSA, *The Registration and Community Notification of Sex Offenders, supra,* note 4 (explaining

notification for this low risk group. See, e.g., N.J.S.A. 2C:7-13(d)(2). With these exceptions, New Jersey avoids advertising the name and family relations of incest victims on the Internet, thereby protecting the victim from humiliation and potential harassment. These exceptions for incest offenses exist because the re-offense rate for incest offenders is low, estimated at 4%.[6] However, under SORNA, there are virtually no exceptions to such notice, as all offenders receive identical notification. We are concerned that this may prevent children and family members from reporting sexual abuse, since parents with the same surname as the victim are likely to be advertised in notices throughout their communities, even at the very schools attended by the children, and via the Internet.

An additional reason New Jersey should be permitted to keep its risk based approach concerns the substantial impact sex offender notification can have on the lives of offenders. This impact is significant because it will jeopardize public safety.

It has been our experience in New Jersey that persons subject to Internet notification will lose housing and employment -- basic resources widely acknowledged by experts in the field as key to reducing recidivism levels.[7] In addition, this notification has led to incidents of harassment, vandalism and assaults of former sex offenders, designed to drive them from their homes. In one New Jersey case, following notification five bullets were fired through the window of a registrant's apartment by a neighbor, nearly wounding an innocent

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differences in re-offense rates among sex offenders.)

6. See, e.g., CSOM, *Recidivism of Sex Offenders* (May 2001)

7 See R. Hanson and K. Morton-Bourgeron, "*The Characteristics of Persistent Sexual Offenders: A Meta-Analysis of Recidivism Studies*," Journal of Consulting and Clinical Psychology 2005, vol. 73, No. 6 1158-59 (showing a 20% correlation between unemployment and re-offense rates among sex offenders); CSOM, *Recidivism of Sex Offenders*, (May 2001) (citing six studies concluding that stable housing, employment, and sex offender treatment reduce recidivism levels); ATSA, *Ten Things You Should Know about Sex Offenders and Treatment (2001)* (same).

tenant.[8]

The Third Circuit Court of Appeals has provided the following summary of the public's response to sex offender community notification in New Jersey:

> The record documents that registrants and their families have experienced profound humiliation and isolation as a result of the reaction of those notified. Employment and employment opportunities have been jeopardized or lost. Housing and housing opportunities have suffered a similar fate. Family and other personal relationships have been destroyed or severely strained. Retribution has been visited by private, unlawful violence and threats and, while such incidents of 'vigilante justice' are not common, they happen with sufficient frequency and publicity that registrants justifiably live in fear of them.

E.B. v. Verniero, 119 F3d 1077, 1102 (3d Cir. 1997). The E.B. court characterized this impact as "very substantial" and as "extending to virtually every aspect of an [offender's] every day life." Id. at 1107.[9]

In New Jersey, direct notification to individual members of the public, the type most likely to impact offenders' jobs and housing, typically occurs only in high risk cases, or approximately 4% of the State's overall sex offender registrant population. New Jersey Admin. Office of the Courts, *Report on*

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[8] A detailed description of incidents of dozens of cases of physical harm and threats occurring to registrants and their families following notification in New Jersey, as well as examples of instances where registrants lost jobs and housing is available upon request.

[9] These sorts of problems are not unique to New Jersey. A Department of Justice study of the impact of Wisconsin's notification law summarized interviews with thirty offenders. Eighty-three percent of the offenders said that notification resulted in "exclusion from residence"; seventy-seven percent reported "threats/harassment"; sixty-six percent reported "emotional harm to family members" and "ostracized by neighbors neighbors/acquaintances"; and fifty percent reported "loss of employment." U.S. Dep't of Justice, National Institute of Justice, *Sex offender Community Notification: Assessing the Impact in Wisconsin*, at 10 (Dec. 2000); see also Doe v. Pataki, 120 F.3d 1263, 1279 (2nd Cir. 1997) (noting "numerous incidents in which sex offenders have suffered harm in the aftermath of notification."); ATSA, *The Registration and Notification of Adult Sex Offenders, supra,* note 5, (describing that "one-third to one-half" of the sex offenders subject to community notification experience "dire events" such as loss of "a home or a job or home threats or harassment or property damage." These "stressors can cause some offenders to relapse.")

Implementation of Megan's Law, 17 (Nov. 2006).

However, SORNA's notification fails to consider risk. For every offender subject to SORNA (tiers 1,2 and 3), the information is authorized to be disseminated directly to a substantially broader segment of the public than under New Jersey law, increasing the risks of lost housing and employment. Also, unlike Megan's Law, SORNA will include both a state and a national Internet website, and will provide direct notice to every individual or organization who requests it in the jurisdiction where an offender lives, works and attends school. As in New Jersey, notification will also go to schools; however, under SORNA it will also include public housing agencies, social service agencies, agencies that do background checks, and volunteer organizations in which contact with minors might occur, and will be re-disseminated in those jurisdictions each time the individual changes his or her address. 42 USC. § 16914. Finally, in addition to its much broader scope of notification, SORNA allows states to include an employer's name and address in the public notification (Id. at § 16914), a provision which will virtually ensure that employment loss becomes more prevalent.

In addition, lost housing and employment will also undercut the efficacy of New Jersey's Community Supervision for Life statute, a law passed as part of the State's Megan's Law. N.J.S.A. 2C:43-6.4. The statute imposes conditions on sex offenders "to protect the public and foster rehabilitation." Id. at 2C:43-6.4(b). The CSL regulations require that State parole officers supervise where sex offenders live and work, and other areas of daily life such as the types of psychological treatment they receive and the persons they associate with. See N.J.A.C. 10A:71-6.11. The lifetime system of parole the statute establishes is an additional reason New Jersey's recidivism levels fall well below national averages. However, if as reasonably anticipated, greater numbers of sexual offenders become homeless and jobless due to SORNA's proposed notification

scheme, offenders will predictably become far more difficult to locate and supervise in the community.

Patty Wetterling has been an advocate for laws that protect children after her son Jacob was abducted 18 years ago and never found. A component of the Adam Walsh Act bears Jacob Wetterling's name. In an interview conducted June 18, 2007, on Minnesota Public Radio, Wetterling articulates the concerns with the one-size-fits-all approach to community notification. Contrary to the nature of recent legislative action on this issue, Ms. Wetterling states she "wants public policy to be effective" and that "broad sweeping laws that treat all offenders the same waste resources and lives." [10]

In preparing this comment, we contacted Ms. Wetterling regarding her concerns with the SORNA. In an email of June 11, 2007, she tells us:

> The reality is that when these guys are released from prison we want them to succeed. That would mean no more victims. I don't believe we have set up a system that encourages or even allows them opportunities that are known to help released inmates succeed. They need a place to live, they need work and they need some type of continued support.

Id.; (emphasis in original). [11]

Ms. Wetterling clearly recognizes the negative impact that SORNA and the Interim Rules will have on community safety. As an advocate for child safety laws, she believes that providing offenders opportunities for work, education and effective supervision in the community can decrease the rate of recidivism. New Jersey's current Megan's Law requirements and the low re-offense rates in the State have obtained have proven this true. It would be manifestly wrong in such an important area of child and community safety to

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[10] *See* Commentary on the Interview of Patty Wetterling, Minnesota Public Radio Internet Article, attached hereto as "Exhibit 2."

[11] *See* email from Patty Wetterling attached hereto as "Exhibit 3."

replace New Jersey's successful approach to the post-conviction management of sex offenders with a system that is untested and will predictably increase the number of jobless and homeless sex offenders.

Ms. Wetterling does not stand alone as the parent of a sexually assaulted and murdered child who is concerned that community notification laws have gone too far. In a recent Megan's Law hearing in New Jersey, Maureen Kanka, an ardent advocate for child protection, addressed the Court through a letter provided by the sex offender's caretaker. In a case that is representative of matters occurring frequently in New Jersey, a 19-year-old male was charged with endangering the welfare of his 13-year-old girlfriend. This case involved consensual sexual intercourse with a minor. In preparation for this registrant's tier hearing, Ms. Kanka, mother of 7-year old Megan Kanka who was tragically raped and murdered by 33 year old Jesse Timmendequas, spoke to Ms. Sharon Horan, the offender's caretaker, about the evolution of the registration and community notification laws which bear her daughter's name. Inviting Ms. Horan to articulate her position to the Court, Ms. Kanka referred to the establishment of the first laws of this nature in New Jersey, stating that "She meant to label men in there 30's from attacking little girls in kindergarten or first grade, not teenage couples."[12] The letter that articulates her comments states that, "Maureen feels that prosecuting misguided teenage couples for a 4 or 5 year age difference is a 'misinterpretation of Megan's Law' and in no way should 'teenage boys like the current registrant ever be compared to sexual a sociopath." *Id.*

Maureen Kanka and Patty Wetterling articulate that one of the keys to ensuring a safe community is to distinguish between true predators and individuals who pose a low risk to society. Without a risk-based system of

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[12] *See* Letter of Sharon Horan, dated July 20, 2006, attached hereto as "Exhibit 4."

registration and notification, this is impossible. The interim rules promulgated pursuant to SORNA blurs this distinction and characterizes every offender as a violent predator. This is simply not the reality nor does it consider established science regarding sex offender recidivism.

Section 637 of SORNA requires the Attorney General to conduct a study "of risk-based sex offender classifications systems," like New Jersey's. The study's purpose is to determine "the efficiency and effectiveness of risk-based systems" vis a vis their ability "to reduce threats to the public posed by sex offenders." This study is to be completed and a report submitted to Congress within 18 months of the SORNA's implementation, making it due in approximately six months on or about January 27, 2008 .

We believe that the proposed rules, which would require New Jersey and other states to end risk-based notification systems with a documented history of success before the required study is complete, has "put the cart before the horse." We strongly urge the Attorney General, pending completion of SORNA's study, to permit states with demonstrated successful risk-based approaches like New Jersey's to continue using them. Then, based upon sound empirical evidence, the Attorney General should promulgate rules that comport with the study's findings. By continuing to pursue implementation of the proposed rules without first studying the issue will impose potentially needless administrative and fiscal demands on the States and seriously risk compromising public safety.

Respectfully submitted,
YVONNE SMITH SEGARS
NEW JERSEY PUBLIC DEFENDER

By: (L.S.)
Michael Z. Buncher
Deputy Public Defender

EXHIBIT 1

REGISTRANT RISK ASSESSMENT SCALE

Criteria	Low Risk	0	Moderate Risk	1	High Risk	3	Comments	Total
Seriousness of Offense x5								
1. Degree of Force	no physical force; no threats		threats; minor physical force		violent; use of weapon; significant victim harm			
2. Degree of Contact	no contact; fondling over clothing		fondling under clothing		penetration			
3. Age of Victim	18 or over		13 - 17		under 13			
							Subtotal:	
Offense History x3								
4. Victim Selection	household/family member		acquaintance		stranger			
5. Number of Offenses/ Victims	first known offense/victim		two known offenses/victims		three or more offenses/victims			
6. Duration of Offensive Behavior	less than 1 year		1 to 2 years		over 2 years			
7. Length of Time Since Last Offense	5 or more years		more than 1 but less than 5 years		1 year or less			
8. History of Anti-Social Acts	no history		limited history		extensive history			
							Subtotal:	
Characteristics of Offender x2								
9. Response to Treatment	good progress		limited progress		prior unsuccessful treatment or no progress in current treatment			
10. Substance Abuse	no history of abuse		in remission		not in remission			
							Subtotal:	
Community Support x1								
11. Therapeutic Support	current/ continued involvement in therapy		intermittent		no involvement			
12. Residential Support	supportive/ supervised setting; appropriate location		stable and appropriate location but no external support system		problematic location and/or unstable; isolated			
13. Employment/ Educational Stability	stable and appropriate		intermittent but appropriate		inappropriate or none			
							Subtotal:	
							Total:	

Scoring: Highest possible total score = 111
Low Range: 0 - 36 Moderate Range: 37 - 73 High Range: 74 - 111

EXHIBIT 2

MINNESOTA PUBLIC RADIO

Sex offender laws have unintended consequences

by Dan Gunderson, Minnesota Public Radio
June 18, 2007

States spend billions of dollars every year to monitor, treat and imprison sex offenders. New laws designed to get tough on sex offenders are a perennial topic of debate at state capitals around the country. There are proposals to make sex offenders wear electronic monitors, restrict where they can live, and post the picture of every offender on the Internet. But do those laws increase public safety, or create a false sense of security?

Moorhead, Minn. — Convicted sex offenders are required to register with police, making it easier for law enforcement agencies to keep track of sex offenders in their community.

Many states have expanded on that idea, posting sex offenders pictures and addresses on the Internet. Some, like Minnesota, post only the offenders deemed most dangerous, while others put every sex offender's picture on a Web site.

The reasoning is, if you know where sex offenders live, you're safer.

TEENAGE SEX LEADS TO SEX OFFENDER STATUS

Ricky is one of the sex offenders whose picture is on the Internet. Even though he's publicly listed as a sex offender, he asked we not use his last name because he fears harassment. Ricky was 17, living in a small town in Iowa, when he had sex with a 13-year-old girlfriend.

"I was playing a game of pool when I met her. She came up and we started talking. I asked her her age and she told me she was 16," says Ricky. "So we went out and danced, started dating. And we ended up having sex twice."

A few months later, when the girl ran away from home, Ricky was questioned by police.

"I just told them the truth because I didn't think I was going to get in trouble. I told them I had sex with her twice," says Ricky. "He told me the parents were not pressing charges, so we're just going to go ahead and let you go home."

But a few days later Ricky was arrested and charged with two counts of felony sexual abuse. He faced up to 20 years in prison.

Ricky pled guilty to a lesser charge and was placed on probation, ordered to get sex offender treatment and register as a sex offender. A few months later his family moved to Oklahoma, where his picture was posted on the Internet as a sex offender.

"THIS WILL ALWAYS HAUNT HIM"

Ricky was kicked out of school, and must stay away from schools and parks. He's been working with a tutor and hopes to get his GED.

Ricky says he'd planned to join the Navy, go to college and become a police officer. Now he works at an assembly plant, and isn't sure what he'll do next.

"I get frustrated at times because I can't do what a kid wants to do. I'm basically stuck," says Ricky. "My friends go out and do stuff. I can't go with them. I can't play basketball or football with them. I just go to work, come home and try to just do stuff around the house."

"He's constantly watching his back," says Mary Duval, Ricky's mother. "He doesn't know if the next person who walks up on him is going to know he's a sex offender, and what they'll do or what they're going to say."

Duval says she believes her son should have been punished for having sex with a 13-year-old girl. But she's angry he's painted with the same brush as a violent predatory rapist.

"He won't date. He won't talk to girls. A girl says 'Hi' to him in the store -- and I have seen him twice bail out of the store and lock himself inside our pickup. He just says, 'I'm scared,'" says Duval. "The damage that's being done by making him register as a sex offender is long term. This will always haunt this kid."

There are likely hundreds of faces like Ricky's mixed in with the dangerous sex offenders on public registries.

POLICIES DRIVEN BY ANGER AND FEAR

Patty Wetterling says it's an example of sex offender laws that go too far. Wetterling has been a vocal advocate for laws to protect children since her son Jacob was abducted 18 years ago. He's never been found.

Wetterling says it's easy to just get tough on sex offenders, but she's tired of tough.

"Everybody wants to out-tough the next legislator. 'I'm tough on crime,' 'No, I'm even more tough.' It's all about ego and boastfulness," says Wetterling.

Wetterling says she wants public policy to be effective. She says broad sweeping laws that treat all offenders the same waste resources and lives.

Wetterling recently met a 10-year-old boy going through sex offender treatment. She says the boy was sexually abused, and later was convicted of abusing a young cousin.

"He finishes his sex offender treatment program and then he goes home to another state, and his picture is on the Internet while he goes back to middle school. What are the odds that kid could ever make it?" says Wetterling.

"We have to treat juveniles differently. It just doesn't make sense," adds Wetterling. "We're setting up an environment that's not healthy. It's just anger driven, anger and fear. It's not smart, and it doesn't get us to the promised land."

Conventional wisdom is that increasing public awareness of individual sex offenders will reduce sex crimes.

RESEARCHER: LAWS ARE COUNTERPRODUCTIVE

"Overall, we don't have very much evidence to support the idea that knowing where sex offenders live actually protects children, or reduces the number of sex crimes in our communities," says Jill Levenson, author of "The Emperor's New Clothes," an examination of sex offender policy.

Levenson teaches at Lynn University in Florida, and compares sex offender laws with research to see if the laws are making a difference.

Levenson says telling the public where the most dangerous sex offenders live might help prevent crime. But she says posting every offender's picture is counterproductive.

"The damage that's being done by making him register as a sex offender is long term. This will always haunt this kid."

- Mary Duval, mother of a registered sex offender

"When you're looking at a sex offender registry online, and you see a pedophile with several arrests and many, many victims, right next to a picture of the 19-year-old with the 15-year-old girlfriend. It becomes very difficult for the public to differentiate and know who's truly dangerous, and how to protect themselves from those people," says Levenson.

In many states, community notification has expanded to include restrictions on where sex offenders can live, or requiring all sex offenders to wear electronic monitors, despite evidence those sex offender management tools don't work well when broadly applied.

Jill Levenson says the research is clear -- making outcasts of sex offenders often makes them more dangerous.

"They need to have a place to live, they need to be able to get jobs. They need to be able to support themselves and their families," says Levenson. "And without those things, they're going to be more likely to resume a life of crime. That's not a debate, that's a fact."

Ricky says he knows what it feels like to be an outcast. His picture has been posted in the local grocery store, he can't hang out with his teenage friends, and his family has moved twice because of harassment.

Mary Duval says being publicly identified as a sex offender has changed her son's life. She worries telling his story publicly might bring a backlash. But she wants lawmakers to

know what happened to a teenager who made a mistake.

"I know tons of parents on the Internet with boys similar to mine, and they're scared," says Duval. "I've been advised not to talk to reporters, not to speak out, because it could bring bad things to my family or Ricky. I refuse to be silent. I'm going to fight this and fight this, until someone listens."

Mary Duval is fighting one of the unintended consequences of getting tough on sex offenders.

A sex offender label means many see her son as dangerous, likely to re-offend, and someone who probably can't be rehabilitated. Those are among the common perceptions held by legislators who write sex offender laws.

Experts say applying the same laws to Ricky and a violent predatory rapist makes for bad public policy.

EXHIBIT 3

OFFICE OF THE JUVENILE DEFENDER

6 Baldwin Street, 4th Floor
Montpelier, VT 05633-3301

Robert Sheil, Esq.
Dotty Donovan, Investigator
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July 26, 2007

VIA ELECTRONIC AND FIRST-CLASS MAIL

Laura L. Rogers, Director
SMART Office—Office of Justice Programs
U.S. Department of Justice
810 7th Street NW
Washington, D.C. 20531

Re: OAG Docket No. 121--Comments on Proposed to Interpret and Implement the Sex Offender Registration and Notification Act (SORNA)

Dear Ms. Rogers:

My name is Robert Sheil and I am the supervising attorney in the Vermont Office of the Juvenile Defender. Our office would like to take this opportunity to comment on the Proposed Guidelines that the U.S. Department of Justice is considering with regard to how best interpret and implement the Sex Offender Registration and Notification Act of 2006 (SORNA). Our office, for the policy reasons set forth below, is opposed in general to the application of SORNA to youth who are under the jurisdiction of the juvenile court system. We are also particularly concerned with certain aspects of the Proposed Guidelines as noted below.

The Vermont Office of the Juvenile Defender is an office within the Office of the Defender General. The Office of the Defender General is the entity in Vermont that provides public defender representation. The Office of the Juvenile Defender provides ongoing post-dispositional legal representation to children and youth who were the subject of petitions filed in juvenile court alleging that they were delinquent, abused, neglected, abandoned, or unmanageable and who were placed in the custody of the Commissioner of the Department for Families and Children as a result of those proceedings. Our office also provides representation to children who are placed in Vermont's sole detention center, provides training to Guardians ad Litem, and offers testimony before the Legislature on proposed legislation relating to juvenile justice and child welfare issues. I, personally, sit on a number of standing committees that address juvenile justice issues.

Research , Including that Sponsored by the U. S. Department of Justice, Indicates that Inclusion of Youth in the Application of the Proposed Guidelines is Contrary to the Basic Tenets of the American Juvenile Justice System

The application of SORNA to youth is contraindicated by a large body of research, including research sponsored by the U.S. Department of Justice.

According to the National Center of Sexual Behavior of Youth (NCSBY), a training and technical assistance center developed by the Office of Juvenile Justice and Delinquency Prevention and the Center on Child Abuse and Neglect at the University of Oklahoma Health Sciences Center, juvenile sex offenders engage in fewer abusive behaviors over shorter periods of time and have less aggressive sexual behavior.[1] In addition, the recidivism rate among juvenile sex offenders is substantially lower than rates for other delinquent behavior (5-14% vs. 8-58%). In fact over 90% of youth arrested for a sex offense are never rearrested for another sex offense, even though the youth may be arrested for other non-sex offenses typically related to juvenile delinquency.[2]

The Center also found that youth are more responsive to treatment than adults and that they are less likely than adults to re-offend given appropriate treatment. In other words, youth whose conduct involves sexually inappropriate behavior—even when assaultive—do not pose the same threat in terms of duration or severity to public safety as do adults.

For these reasons it is not good public policy to include in public sex offender registries for periods of 25 years to life youth adjudicated in juvenile court.

The Effective Treatment and Rehabilitation of Youth will be Compromised by the Application of the Proposed Guidelines to Them

The application of SORNA to youth is contrary to the core purposes, functions and objectives of our nation's juvenile justice systems in that it strips away the confidentiality and the overall rehabilitative emphasis which form the basis of effective intervention and treatment for youthful offenders.

It is imperative to keep in mind that youth implicated by the Act have not been convicted of any criminal offense. States' legislatures and prosecuting authorities have affirmatively acted to distinguish juveniles committing delinquent acts from adults committing criminal acts. These children have been adjudicated delinquent and, by virtue of that adjudication, have been found to be amenable to treatment and deserving of the opportunity to correct their behavior without being subjected to both the stigma and perpetual collateral consequences that typically accompany criminal convictions. Subjecting juveniles to the mandates of SORNA interferes with and threatens child-focused treatment modalities and may significantly decrease the effectiveness of the treatment.

SORNA as applied to youth will have a chilling effect on the identification, adjudication and proper treatment of youth who exhibit inappropriate sexual behavior. Parents, rather than recognizing the value to their child of holding him or her accountable, will be more inclined to hide their child's problem and not seek help when they learn that their child may be required to register for life as a sex offender.

In addition, public registration and community notification requirements can complicate the treatment and rehabilitation of these youth. Youth required to register have been known to be harassed at school, forcing them to drop out.[3] The stigma that arises from community

substantiated after investigation have their names placed on a child abuse registry even if a delinquency is not filed in juvenile court or a criminal charge is not filed in adult court.

This registry is accessible to prosecutors, the attorney general, certain department commissioners and to employers if such information is used to determine whether to hire or retain a specific individual providing care, custody, treatment, or supervision of children or vulnerable adults. The employer may submit a request concerning a current employee, volunteer, or contractor or an individual to whom the employer has given a conditional offer of a contract, volunteer position, or employment. The request shall be accompanied by a release signed by the current or prospective employee, volunteer, or contractor.

In addition, there are another two separate statutory provisions in Vermont law that specifically provide notice regarding delinquent youth who have been adjudicated for any delinquent act that involved any sort of sexual abuse, and these, provide protection for the public. Under 33 V.S.A. §5529g(4) a victim of a sexual offense may request to be notified by the agency having custody of the delinquent child before he or she is discharged from a secure or staff-secured residential facility.

There is also an exception to the confidentiality of juvenile court records, found in 33 V.S.A.§ 5536(b) and (c) which mandates the family (juvenile) court to provide written notice within seven days of a delinquency adjudication involving sexual abuse as well as certain other listed crimes, to the superintendent of schools for the public school in which the child is enrolled or, in the event the child is enrolled in an independent school, the school's headmaster. This notice is required to contain a description of the delinquent act found by the court. 33 V.S.A. § 5536a(d).

Both of these statutory schemes provide the type of public safety protections that are the focus of SORNA and comply with the essence of the act.

States that create and maintain child abuse registries such as the one described above should be deemed to have substantially implemented the SORNA standards with respect to the Registration Requirements and Community Notification Standards.

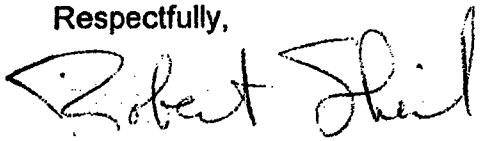
Conclusion

The Vermont Office of the Juvenile Defender has always supported and will continue to support efforts to hold offenders accountable, protect vulnerable populations and improve the overall public safety for all communities and their citizens. However, for all of the reasons stated above, we believe that the Proposed Guidelines that have, at present, been promulgated by the Attorney General fail to take into account the inherent differences between adolescents and adults and fail to recognize the growing body of knowledge regarding recent discoveries in the area of adolescent brain development. The Proposed Guidelines negatively and unnecessarily impact the short- and long-term rehabilitation of youth adjudicated within the juvenile court system. We therefore urge the Attorney General to wholly or, alternatively, to limit their application in the ways discussed above.

Thank you for the opportunity to comment on the Proposed Guidelines to interpret and implement the Sex Offender Registration and Notification Act, and we trust that our comments

will be given serious and thoughtful consideration. May we thank you in advance for your kind consideration and attention to this matter.

Respectfully,



Robert Sheil, Esq.

Vermont Juvenile Defender

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[1] National Center on Sexual Behavior of Youth, Center for Sex Offender Management (CSOM) and U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, (2001). *Juveniles Who Have Sexually Offended; A Review of the Professional Literature Report;* available at http://www.ojjdp.ncjrs.org/.

[2] Zimring, F.E. (2004). An American Travesty. University of Chicago Press.

[3] Freeman-Longo, R.E. (2000). Pg. 9. *Revisiting Megan's Law and Sex Offender Registration: Prevention or Problem.* American Probation and Parole Association. http://www.appa-net.org/revisitingmegan.pdf.

[4] Garfinkle, E., Comment, 2003. *Coming of Age in America: The Misapplication of Sex-Offender Registration and Community Notification Laws to Juveniles.* 91 California Law Review 163.

5 Ibid

[6] This past June, Connecticut raised the age of original juvenile court jurisdiction to age 17.

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July 27, 2007

Ms. Laura L. Rogers, Director
SMART Office
Office of Justice Programs
United States Department of Justice
810 7th Street NW
Washington, DC 20531.

Subject: OAG Docket No. 121

Dear Ms. Rogers:

We wish to make one comment upon the publication of Proposed Guidelines to Interpret and Implement the Sex Offender Registration and Notification Act .

As stated in the document entitled *The SMART Office: Open for Business*, "the Office is the primary contact point for all professionals in need of assistance."

Our comment: We believe a primary information point must be provided for offenders as well.

We are recommending that an easy to read/understand "Sex Offenders' Guide to Obeying the AWA Law" be created AND provided to each and every sex offender to whom it applies.

While the acronym of your office stands for SEX OFFENDER SENTENCING, MONITORING, APPREHENSION, REGISTRATION AND TRACKING, the mission statement is "to assure that convicted sex offenders are prohibited from preying on citizens through a system of appropriate restrictions, regulations and internment".

We believe the mission can only be accomplished if your office can encourage sex offenders to register so you know where they are.

Unfortunately the law is already in effect. Enforcement is complex at this time and information given to a sex offender requesting information is disparate or incorrect. Many local law officials are not even aware of its registration requirements. There are also discrepancies which cause confusion: In California, for instance registration for Tier II is once a year, but the Federal Law requires two registrations per year.

Prosecution of individuals who have not been properly informed will eventually open up the program to challenges of breach of due process or entrapment. Many RSO's are homeless. Many on parole or probation are forbidden computer access, so an information Website would be useless.

Section 126 of SORNA offers SOMA Grants, but only as an aid for registration and apprehension, not education.

We would like to encourage a Grant therefore for dissemination of information to the targeted individuals for whom this law was written- namely the sex offender.

We would like to offer development of the Sex Offenders Guide Booklet. We have the expertise. I would be happy to discuss our ideas further and can be contacted at 800-573-8876.

Yours truly,

Carole Urie

Carole Urie, Founder

Rogers, Laura

From: Janet Neeley [Janet.Neeley@doj.ca.gov]
Sent: Thursday, July 26, 2007 7:46 PM
To: GetSMART
Cc: George Scarborough; john.isaacson@oes.ca.gov
Subject: Public Comments on Proposed Guidelines

Attachments: HTML

Adam Walsh public comments fin...

Attached are the official public comments from California on the proposed Guidelines for SORNA. Please contact California Deputy Attorney General Janet Neeley if there are any questions or issues concerning this submission at 916-324-5257 or 916-761-6070 (cell).
Janet Neeley

California's Comments On the Proposed National Guidelines to the Sex Offender Registration and Notification Act

Preliminary Comments

California is in the process of a four-year renovation of its sex offender registration database (the Violent Crime Information Network, known as "VCIN"), and is in the process of contracting with a vendor to build a modern computer database, following a year and a half process of strategic planning for the new database in order to obtain bids. If the California Legislature adopts SORNA, software modifications to the state's new sex offender registration database will be necessary to permit many of the required actions to occur. The renovation of VCIN is currently scheduled for completion in July 2010. It will be impossible for California to implement many of the proposed changes to California registration and notification laws by July 2009 since software modifications required by adoption of SORNA cannot be completed in California prior to the roll-out of the new state DOJ sex offender registration database in July 2010.

Sealing a Juvenile Criminal Record

Sealing the juvenile record under current California law, which a court can order any time after the juvenile reaches age 18, eliminates the duty to register as a sex offender. The issue of the impact of sealing a juvenile record is not directly addressed by SORNA. California believes it is better policy for the states to allow trial courts to determine, in juvenile cases, whether a record should be sealed, which would end the duty to register for that juvenile. Such a determination is based upon the individual risk assessed for that particular juvenile, and better comports with due process than a blanket rule, such as that stated in the Guidelines, which does not consider individual risk. The proposed National Guidelines to SORNA (hereinafter "Guidelines") state that sealing a criminal record does not change its status as a "conviction" for purposes of SORNA. (See Guidelines at p. 16.) Does this preclude ending the duty of a juvenile to register upon the sealing of a juvenile criminal record? Would it show substantial compliance with SORNA if a state law was enacted which limited the discretion of judges to grant sealing of a juvenile record to cases in which the juvenile offender was shown to meet certain criteria, including demonstrating that his assessed individual risk of recidivism was low and his potential for violent or aggravated criminal behavior was low?

Further, it is our understanding that if a juvenile record was sealed after release from supervision, prior to the enactment of SORNA by the state, that such a juvenile would not have to register unless he or she re-entered the justice system for another offense. If the person re-enters the justice system, and the sealed record is still available, it is our understanding that the person will be required to register if the juvenile sex offense is subject to SORNA. Is this correct?

Offenses against Children Younger than 12

The Guidelines state that juveniles who commit a covered offense against a child younger than age 12 must register. (Guidelines at p. 17.) However, specific criminal offenses in California against children require that the child victim was younger than age 14 or, in the case of misdemeanor sex offenses, younger than18. There is no way to determine from state records, retroactively, whether a past adjudication was an offense committed against a victim younger than 12. Thus, California will be able

to implement SORNA only prospectively as to this requirement. Implementation of this requirement will require changing state law to require all criminal dispositions sent to the state Department of Justice (DOJ) to include the age of the child victim. This entails mandating changes to court reporting forms on convictions, which are the subject of public comment prior to change. The same changes to state law and reporting forms will be necessary to determine whether a person is a Tier III offender, because currently state criminal history or sex offender records will not record whether a victim was under 13. Consequently, the state will never be able to determine from state records, retroactively, whether a victim was under age 13 to classify an offender as Tier III.

Currently, because juvenile adjudications for registrable sex offenses are not publicly disclosed in California, California does not submit them to NSOR. Does SORNA require their submission to NSOR?

A juvenile whose offense was against a child under age 12 is subject to SORNA. (Guidelines at p. 19.) Since California's child molestation statutes involve either children under age 14 (Pen. Code, §288) or children under age 18 (Pen. Code, § 647.6), it is not possible to determine under current California law the age of the victim from court disposition documents provided to DOJ. California law would have to be changed to require the victim's age to be pled, proven, and specified on court disposition documents and the abstract of judgment. Even though some sex offender registrants currently registering for a juvenile adjudication in California may not be required to register under SORNA, the state would have no viable way to determine retroactively whether the offense involved conduct other than force/threat of serious violence when the section of conviction included other contingencies; and no viable way to determine the age of the victim of the offense.

"Sexual act" is defined in SORNA as including oral-genital or oral-anal contact; genital or anal penetration; and direct genital touching of a child under 16. However, a juvenile adjudicated for having committed a lewd and lascivious act against a child under 14 (Pen. Code, §288), or for annoying/molesting a child (Pen. Code, § 647.6), may not have committed a "sexual act" within the SORNA definition. Again, state records will not disclose the nature of the act committed. Often, in plea situations, no court records describe in detail the nature of the sexual act committed. Further, until 1995, California courts were not required to retain records on felony sex offenders, and it was not until 2006 that the courts were required to retain records on misdemeanor sex offenders. (Cal.Govt. Code, § 68152.) Thus, if California law was amended to require juvenile registration pursuant to the SORNA definition of sexual contact, it would be impossible to determine, retroactively, which prior juvenile adjudications were subject to the registration law. Prospectively, in order to implement SORNA's requirement for juveniles, the charging document would have to specify the nature of the conduct, and a finding would have to be made on the record prior to judgment/plea; the finding of the nature of the actual sexual conduct would then have to be included on the court disposition form sent to DOJ. Alternatively, the nature of sexual contact for purposes of juvenile registration would have to be expanded in California to include any conduct currently prohibited by Penal Code sections 288 and 647.6, and analogous offenses.

Juveniles required to register pursuant to SORNA must be posted on the public web site, regardless of tier level–is this correct?

Foreign Convictions

The Guidelines require registration for those countries deemed to have a criminal justice system which affords due process of law. (Guidelines at p. 18.) The web site referenced as listing these countries is unclear regarding which jurisdictions qualify. A more recent and clear list of such countries should be

included in the Guidelines.

Protected Witnesses

The Guidelines state that disclosure of information about protected witnesses will be made on a case-by-case basis. (Guidelines at p. 22.) Such cases require extreme flexibility in the software which flags violations and displays public data about offenders. California will not be able to incorporate the necessary changes to its sex offender registration database to implement flexible treatment of protected witnesses until its database renovation is completed. The completion date is July 2010.

Tier II Offenses

The Guidelines provide that any offense against a minor, even when age is not an element of the offense, requires classifying the offender as Tier II. (Guidelines at p. 25.) Again, since victim age is not reported to DOJ on crimes in which age is not an element (such as sexual battery), California will not be able to determine, retroactively, which persons fall into Tier II for offenses committed against minors when age was not an element of the offense. Such persons' tier level will be ascertainable only after changes to state law occur, requiring pleading, proving and reporting victim's age. (Please note that in 2006 the California Supreme Court ruled that a pre-sentencing report by a probation officer is not a part of the official court record, so we are unable to use such a report to ascertain a victim's age, even if such a report is still available.)

Tier III Offenses

The Guidelines provide that a sexual act committed by force or threat requires Tier III classification. (Guidelines at p. 26.) However, many forcible sex offenses in California include, under one offense category, offenses committed not only by force or threat, but alternately by duress, menace, fear of immediate bodily injury, etc. (See, e.g., Cal. Pen. Code, § 261(a)(2)–the definition of forcible rape.) The state will not be able to determine, retroactively, which offenders fall into Tier III because a conviction for such an offense may have been based on duress, etc., rather than force or threat. Unless the Guidelines more broadly define this category for purposes of Tier III designation, California will not be able to retroactively determine which offenders committed these offenses by force or threat in order to classify them as Tier III..

Similarly, California will not be able to determine, retroactively, which offenders fall into Tier III based on commission of an offense against a child under the age of 12 which was punishable for more than one year. Since victim age has never been pled or proven (except when the offense requires an offense either against a child under age 14, or under age 18), there are no state records which report the age of the victims on sex offenses. In order to prospectively classify offenders as Tier III based on victim's age, state law will have to be amended to require pleading, proving, and reporting the victim's age to DOJ on every sex offense. This same problem exists in proving offenses against a child below the age of 13 that are comparable to or more severe than abusive sexual contact as defined in 18 U.S.C. section 2244. (See Guidelines at p. 26.) Currently, California's main felony child molestation statute requires proving only that the victim was under age 14.

Tier Changes

When new sex offenses are committed, there may be an automatic change in tier level, requiring a means of automatically flagging the person's record when it results in a new tier designation. However, appropriate software will be necessary to enable automatic tier changes to occur within the sex offender

registration database after a new conviction, which will require an interface between the registration database and the state criminal history database. If the state adopts SORNA, software modifications to the new sex offender database, due for delivery in July 2010, will be necessary to permit such tier changes to occur automatically when a new qualifying offense is reported, and to alert the state DOJ to send a letter to the registrant detailing the new registration requirements for the new tier level.

Required Registration Information

A. Digital Access to Related Databases

California cannot, by July 2009, meet the requirement that criminal history and DNA information be digitally accessible through either the sex offender registration database or links to other online databases. (Guidelines at p. 28.) As noted above, California's new software for its sex offender registration database will not be completed until 2010. Thus, California will not have the capability to digitally link its sex offender registration database to California's criminal history database (Automated Criminal History System), which contains DNA information, until July 2010 at the earliest.

B. Identifiers and Addresses; Volunteer Information

California law and sex offender registration software will have to be changed to include the required information on Internet identifiers and addresses. (Guidelines at p. 28.) This cannot be accomplished until the renovation of VCIN in July 2010. The same is true for information regarding places where registrants work as volunteers. Additionally, it appears that the location of agencies where registrants work as volunteers must be publicly disclosed on the Internet–is this correct?

C. Digital Link to Registration Offense

Although the Megan's Law Internet web site in California can provide a link to current criminal offense statutes for California, which are available on the California Legislature's web site, it is unable to provide a link either to superseded statutes, which to our knowledge are not available on a publicly accessible database, or to out-of-state codes, especially superseded ones. (See Guidelines at p. 34.) To our knowledge, there is no public link for superseded state codes, and even paid databases such as Lexis-Nexis provide access to superseded statutes only going back to the early 1990's. California does not have a free database containing superseded state statutes, nor are we aware of any other state which maintains such a database. As a result, in order to comply with this requirement, California would have to create a separate database of superseded codes by keying in all past criminal offenses going back an indeterminate length of years. This is not a feasible project. Even if such an effort was worth the time and money, California could not create such a database for other states' superseded codes. If the requirement was prospective only, it might be possible to create a database of the sex offense codes in California starting in the year of implementation, by scanning those codes into a separate database, but again, our software for the new registration database could not link to such a superseded California codes database until at least July 2010. It would make more sense for the U.S. Department of Justice to compile a database of all the states criminal codes, both current and superseded, which all could access. The current system used by California to obtain superseded out-of-state code sections, which are necessary to evaluate out-of-state sex offenses to determine if they contain all the elements of a registrable sex offense in California, is to have the California State Library obtain and fax the pertinent statute to state DOJ. If not obtainable from the library, prosecutors offices in other states have sometimes found and faxed us superseded out-of-state statutes. Rather than requiring each state to set

up a comprehensive database of superseded state codes, federal DOJ should establish such a database that is accessible to the states.

D. Digitized Copies of Passport and Immigration Documents, and Driver's Licenses

The Guidelines require digitized copies of passports, immigration documents and driver's licenses to be maintained in the sex offender registration database. (Guidelines at p. 31.) The availability of equipment which can digitize such documents at local law enforcement agencies, which register sex offenders in California, will be sporadic at best. It will be expensive and difficult for each registering law enforcement agency to acquire the necessary equipment for this task. Further, the incorporation of such digitized documents in our sex offender registration database may require further software development, which at the earliest could be completed by July 2010.

E. Travel Routes and General Area of Employment

The Guidelines require that if a registrant travels for employment that the registration information must include travel routes and general location information. (Guidelines at p. 31.) This information will be vague and California questions the usefulness of its inclusion in the database, either to law enforcement or the public.

F. Status of Parole, Probation or Supervised Release and Outstanding Warrants

The Guidelines require links between the sex offender registration database and supervised release and warrant databases. (Guidelines at p. 34.) While California can link the sex offender registry beginning in July 2010 to existing parole and warrant databases, participation by county probation departments in the database for probationers (the Supervised Release File) is voluntary. Consequently, it does not contain complete information on sex offenders on probation. Would a change to California law be required to mandate full participation in this database by county probation departments in order to substantially comply with SORNA?

G. Palm Prints

The Guidelines require digitized copies of palm prints to be included in the central registry or that there be links to the palm prints if contained in another database. In California, registering law enforcement agencies with Livescan capability can be required to send digitized palm prints to the state DOJ, and the sex offender registration database can be linked to these images. However, many local registering agencies in California do not yet have Livescan machines or the capability to obtain digitized palm prints. Palm prints can be collected from registrants sent to California state prisons, which have Livescan capability. However, probation departments may not have access to these machines in a number of California counties. The cost of mandating that each local registering agency, county jail and county probation office acquire a Livescan terminal in order to capture palm prints would be prohibitive. Such agencies send hard copy fingerprint cards to DOJ when a Livescan terminal is not available to send digitized fingerprints. Would substantial compliance require mandating the submission of digitized palm prints in every case?

H. Driver's Licenses

In order to link DMV software displaying driver's licenses to the state sex offender registry, software modifications will be required which again cannot be implemented at least until California's new database is scheduled for release in July 2010.

I. Professional Licenses

The Guidelines require registrants to provide information about professional and business licenses. (Guidelines at p. 32.) This information is not required under current California law. It will be necessary to amend the software for the registration database (VCIN) to incorporate such information, which cannot be accomplished until July 2010.

Disclosure and Sharing of Information

A. Radius Required for Public Internet Searches

The "radius set by the user" requirement is ambiguous. (Guidelines at p. 36.) Does it mean that the user must be able to select any desired radius to search, or that the public web site simply needs to have a set of values the user can select? In addition, does this apply to every search category? California currently defaults to a one mile search radius, but allows the user to select 1/10 mile, 3/4 mile and 2 miles for address, park and school searches. Is this sufficient?

B. Driver's License Numbers Required to Be Displayed on Internet?

The Guidelines do not specify that the image of the registrant's driver's license is exempt from disclosure. (Guidelines at p. 37.) There appears to be no reason grounded in public safety concerns for disclosing this information, and its posting presents a serious identity theft issue for registrants. The final Guidelines should specify that these are exempt from public disclosure.

C. State Display of Registration Information Within Three Working Days

The requirement that the states display new registration information within three (3) working days (Guidelines at p. 41) is not feasible. This gives local registering agencies only two days to input such information to state DOJ. A more realistic deadline would be to give registering agencies 3-4 days to input the registration data, and the state could then have it posted by the fifth working day after registration. The Legislature would have to mandate that local law enforcement agencies provide registration or updated information to California DOJ within two (2) working days, in order for DOJ to be able to display it to the public within 3 working days. (See proposed Guidelines at p. 43.) Currently, there is no statutory deadline for entering registration information into VCIN.

Additionally, this requirement poses a problem regarding public display of information about out-of-state/foreign sex offenders. Although such an offenders can be required to register within the required time period upon entering California, their information is not posted on the public web site until the state DOJ's Assessment Unit has determined, after legal review in most cases, that the person is in fact required to register pursuant to California law. This assessment entails obtaining registration, court, and other documents from the foreign jurisdiction, and can be a time-consuming process. However, until the assessment is completed, and this time varies from case to case, there is no assurance that the out-of-state registrant in fact is required to register under California law. Thus, public disclosure would be premature. California law requires that either the person has a current duty to register in the state of conviction, or that all the elements of the foreign offense are present in a mandatory California registrable offense. In addition, a full assessment is required even for those who have a current duty to register in another state because there are five exceptions to that requirement which necessitate a full comparison of the elements of the out-of-state criminal offense and the comparable California offense. California thus cannot post such offenders on the public web site until this assessment process is completed.

D. Information Mandated for Display or Exclusion from the Public Web Site

The proposed Guidelines require the state to display all required registration information on the public web site except for the following: victim identity; Social Security number; arrests not resulting in conviction; and travel and immigration document number. (Guidelines at p. 37.) The state may exclude the following information from the public web site, in its discretion: information about Tier I offenders whose sex offenses were not against minors; names of employers of registrants; and names of educational institutions where the sex offender is a student. SORNA and the proposed Guidelines additionally mandate that certain information must be displayed on the public web site. California already displays some of the required information. The following information which is not currently displayed on California's public Megan's Law Internet web site, but which the proposed Guidelines require the states to display, is as follows: the address of any place where the sex offender is or will be an employee, and if no definite employment address, information about where the sex offender works; the address of any place where the sex offender is or will be a student; the license plate number and description of any vehicle owned or operated by the registrant; and e-mail addresses. Current registry software cannot accommodate additional data fields. Consequently, even if state law was amended sooner to require this additional information to be collected, it could not be displayed on the public web site until the modification of the sex offender registry software, scheduled for implementation in July 2010.

Similarly, California does not currently include on its public web site the following information which would be required to be displayed if SORNA is adopted: information about any place where a registrant stays, on a temporary basis, for seven or more days, including identifying the place and period of time the sex offender is staying there; information about travel routes when a sex offender's job involves habitual travel; professional or occupational license information; the address of any school (including secondary schools) attended; descriptive information on watercraft and aircraft owned, including where the boat or airplane is parked, docked, or otherwise kept; text of the registration offense, or a computer link thereto; and the address of the registrant's employer, including the address of an employer which is an institution of higher education. Again, these data fields cannot be included in current state sex offender registry software, nor displayed on the public web site, until full renovation of VCIN is completed in 2010.

Similarly, California does not currently display sex offenders convicted of incest (Cal. Pen. Code, § 285) because display may inadvertently disclose the victim. California also currently permits certain incest offenders to be excluded from the public web site upon application to state DOJ. It appears that all incest offenders whose victim was a minor must now be displayed on the public Internet web site–is this correct?

E. Community Notification and Targeted Disclosures

The proposed Guidelines require that within three working days after an initial registration or any update of registration, information must be provided to specified entities and individuals: (1) to the FBI if required for inclusion in the National Sex Offender Registry; (2) to the U.S. Marshals Service, if required by that agency; (3) other law enforcement and supervision agencies; (4) national Child Protection Act agencies [child care providers background checks]; (5) schools, public housing agencies, social service entities which protect minors, volunteer organizations in which contact with minors might occur; any organization or individual requesting such notification. This requirement is satisfied if the state requires that the updated registration information is included on sex offender web sites and posted within 3 working days, and if the state's web site includes a function under which members of the public and organizations can request notification when registrants commence residence, employment or school attendance within zip code or geographic radii specified by the requester, where the requester provides

an e-mail address to receive such information, and an automatic update is sent to the requester when new registration information is entered. (Proposed Guidelines at p. 43.)

The above automated notification system will have to be incorporated in California's VCIN renovation project. It cannot be implemented prior to July 2010. It will also require a change to state law to require local law enforcement to input registration information within two working days. As noted above, this is an unrealistically short timeline. Three days for local input and two for posting online would be more feasible.

Additionally, the Guidelines require submission to NSOR, and notification to the U.S. Marshals Service, as well as unspecified other federal agencies, every time a registration entry or update is made by a local registering agency. In California, this seems to mean that hundreds of thousands of registration transactions each year must be individually reported. Since the registration information is entered into the state's central sex offender registry, VCIN, and is also available to law enforcement via California's intranet Megan's Law web site for law enforcement, California asks for clarification regarding whether this information must also be electronically transmitted to the U.S. Marshals Service. It will be automatically submitted to NSOR, but California believes that the three day deadline, as discussed herein, is too short, and that a 4-5 day window would be more feasible, to allow local agencies 3 days to input the data and 2 more days for the state to post and transmit such information.

F. National Child Protection Act Agencies

The Guidelines require the state to conduct a criminal history background check on child care/elder care providers. California already provides such checks; however, the Guidelines state that jurisdictions can implement this by making criminal history information available within three business days. (Guidelines at p. 43.) Does this mean background checks by the state Department of Justice would also have to be accomplished within three days? If so, the timeline is unworkable. California is a closed record state and is unlikely that the Legislature will change the system we now have, in which background checks of criminal history information are conducted by the state, to allow others to access criminal history information directly. Thus, more time must be allowed for the state to complete a criminal history background check.

Where Registration is Required

A. Registration in County of Conviction

The Guidelines state that the jurisdiction of conviction is in a better position to register a sex offender within three working days of release and therefore even if a sex offender is paroled to a different jurisdiction, he must first travel to the jurisdiction of conviction to register within three working days. (Guidelines at p. 45.) California understands this requirement to apply only when the registrant is convicted in another state, and thereafter returns to the home state. Is this correct?

California questions the usefulness of this requirement since the offender will not yet have obtained an actual residence address where he expects to reside. In California, if a person is convicted here of a sex offense, the state registry will already have all the information needed about the registrant in the registry from his pre-registration and his notification forms prior to release on parole or onto probation. The only pertinent missing information is his actual address. He has to have proof of residence at a certain address in order to register in California. If he is registering in California only because he was convicted and released from custody here, he will not have an address which he can register. Is it intended that California require he provide an address in another state where he expects to reside instead?

B. Transient Registrants

The Guidelines require transients to register in the jurisdiction(s) where they "habitually reside." (Guidelines at p. 46.) Presumably, this also means that when they change the area where they habitually reside, they have to register that change in registration information. California intermediate appellate courts held that a prior registration law (pre-1995) requiring transients to register where they were located, and to re-register upon change of location, was unconstitutionally vague. Thus, California law was amended and now requires simply that transients register every 30 days, in whatever jurisdiction they are located. California cannot go back to the system now proposed by the Guidelines because it has already been ruled unconstitutional, since a transient's place where he habitually resides is almost identical to the prior requirement that a transient register where he was located. California requests clarification that its current system of transient registration every 30 days will be deemed in substantial compliance with the Guidelines.

California also requests clarification of the posting requirements on transient information. Since transients do not register at a particular location, they are required to list places they frequent on the registration form but this information is not publicly displayed. Would its display be mandated under the Guidelines?

C. Registration in Employment Jurisdiction

The Guidelines state that registrants must register in the jurisdiction of employment. California understands this to mean that if the registrant resides in California but is employed in another state, he must register in both states. However, if the registrant both resides and works in California, the state can permit him to register just in the jurisdiction where he resides, but he will be required to provide information about his employment to that registering jurisdiction. Is this correct? California cannot display on its public web site the additional data field of employment address at this time, which will have to wait until implementation of the new database in 2010.

D. Registration in Jurisdiction of School Attendance

If adopted, the new law would also require registration in the jurisdiction where the person attends school. California law already requires this for institutions of higher education, but the Guidelines state that it also applies to secondary schools. (Guidelines at p. 47.) This means that registering agencies in every jurisdiction with a secondary school will have additional registration responsibilities, or that the agency with jurisdiction over the residence must also take information about the secondary school attended (institutions of higher education register persons required to register on those campuses if a police force exists for the campus). The new requirement means that state DOJ's registration database will have to have an additional field for secondary school attendance; again, this cannot be accomplished until VCIN renovation in 2010 to add the data field to the registry, and also to post the school's address on the public Internet web site.

Initial Registration

A. Forwarding Initial Registration Information to Other Jurisdictions

The Guidelines require that the initial registering jurisdiction forward the information to all other jurisdictions in which the sex offender is required to register. (Guidelines at p. 48.) Can this be accomplished by forwarding the information to the central registry at state DOJ, where it is then made available on a law enforcement intranet web site as well as through VCIN?

B. Retroactive Classes

The Guidelines provide that even though SORNA applies retroactively, if persons subject to SORNA have been released from prison and supervision without being notified of the now-existing registration duty under SORNA, they do not have to be notified and registered unless they re-enter the system. Generally, retroactive application is not a problem in California since we have had lifetime registration since 1947. However, until 1996 any registered sex offender who obtained a certificate of rehabilitation was released from the duty to register; since 1996, certain categories of registrants are still released from the duty to register upon obtaining a certificate of rehabilitation, including misdemeanor child molesters, who will fall into Tier II under SORNA. Will persons who obtained certificates of rehabilitation (or whose juvenile records were sealed) and were notified that their duty to register ended now have to be notified, if they re-enter the system, that the duty to register has been revived by SORNA?

C. Federal Parolees and Notification of Registration

The Guidelines state that federal parolees will be notified by the federal Bureau of Prisons of their duty to register pursuant to SORNA. (Guidelines at p. 51.) It would be useful if the registrant was also notified, pursuant to the notification law of the state to which the offender will be paroled, of the duty to register in that state. California has a form which all state prisoners must complete prior to release from custody, called the Notification of Registration Requirements form (DOJ form SS 8047). The states could provide online access to such forms for the federal Bureau of Prisons to download the current forms, and the Guidelines could require all federal and military parolees being paroled to a particular state to sign that state's notification form prior to release, in addition to any federal notification form. A copy of both the federal and state notification forms should then be forwarded, electronically or in hard copy, to the state's sex offender registration database, within 45 days of release.

D. Forwarding Information about Registrants Entering the State

The Guidelines seem to require the state to notify individual registering agencies when it receives notice that an offender from out-of-state or a foreign jurisdiction is expected to enter the state and register at a particular location. (Guidelines at p. 52.) If the state receives such information, it will require new data fields in VCIN to enter it, since there is currently no system for recording information on such a registrant prior to his appearing at the local agency to register as a sex offender. VCIN cannot accommodate such a new field until July 2010. Additionally, California questions whether this guideline requires individual notification to a particular local agency in addition to entering the data that the registrant is expected to reside in a particular jurisdiction within the state in VCIN, California's central sex offender database?

Keeping the Registration Current

A. Updates Within 3 Business Days Are Required

The Guidelines require that the registrant keep his registration current in each jurisdiction where he registers, including the jurisdiction where he resides, or is employed, or is a student. (Guidelines at p. 54.) This information must be "immediately" transmitted to all relevant jurisdictions and it is unclear whether this can be accomplished simply by electronically forwarding the changed registration information to the sex offender registry at DOJ, where all agencies would have access to the information via VCIN and the law enforcement intranet web site for Megan's Law in California. However, transmission to the state registry, where it is accessible to all relevant agencies, should be deemed to suffice. California requests clarification of this requirement.

B. Update of Registration Information in Various Jurisdictions Required

California's understanding of the requirement to register a change in employment or campus registration status is that it can be reported to the local agency designated by the state, so in California that would be the agency with jurisdiction over residence for all changes except changes to campus status. (Guidelines at p. 54.) Our further understanding is that only when the person registers in another state for employment or school attendance is he required to report the change in each jurisdiction. Since all such registration information is sent to the state registry at DOJ, all local police jurisdictions will be aware of any change made in employment or student status via entry of the changed information into the state database. There should be no need to electronically forward changes to registration information to individual registering agencies, since all such agencies can view the updated changes in California's sex offender central registry, VCIN, as well as accessing those changes on the law enforcement Megan's Law intranet web site. (See Guidelines at pp. 55-56.) Thus, there would seem to be no need for electronic forwarding of changed registration information, since he would have notified each state with jurisdiction over residence, employment or campus status of any change to that status. Is this correct?

C. Failure to Appear

The Guidelines provide that if a sex offender who is expected to commence residence, employment or school attendance fails to appear, the agency must notify the last registering agency of the failure. (Guidelines at p. 56.) Does this mean that when a registrant notifies the last registering agency that he is moving, ending employment, or ending school attendance, that he is also mandated to provide the new address or location where he expects to live next, if known; the name of a new employer, if known, and the name of a new school, if known? In most cases, of course, the registrant will not know the new address, employer or school. If such information is supplied by the registrant, it would be posted in the state's central registry, which is open to law enforcement. Again, this requires software changes to California's database which cannot be accomplished prior to July 2010. Does this also require a separate electronic notification by the last registering agency to the proposed jurisdiction of new residence, employment or school attendance?

D. Changes in Other Registration Information

The Guidelines require a registrant to immediately report changes to information on vehicles, temporary lodging of seven or more days duration, and changes in Internet identifications/addresses. (Guidelines at p. 56.) These are required to be transmitted electronically to all other registering agencies. However, since these changes will be transmitted to the central registry, VCIN, and available for all other agencies to view, there is no need for a separate requirement of electronic transmission to the other individual registering agencies. California would like clarification that availability of this information to all registering agencies in VCIN and Megan's Law law enforcement sites obviates the need to separately submit such information to other registering agencies. California understands that if another state is involved (such as travel plans reported to another state), that California is supposed to e-mail the travel update to the other states involved–is this correct? Would this transmission be to the state's sex offender registry, or to the county in which the offender plans to be in his travels out-of-state?

E. Reporting Residence, Employment or Study Abroad

The requirement that registrants report employment or study abroad (Guidelines at p. 58) will require amending California law and registration forms. Under California law, registrants already report a change of residence to a location outside the country. This new information cannot be incorporated into VCIN until July 2010. California understands the requirement to notify all other registering

jurisdictions to mean other states which maintain registration information on the registrant. Transmission to other registering agencies within California is unnecessary, since the information will be available to all agencies via VCIN and the law enforcement intranet web site for Megan's Law. Additionally, the U.S. Marshals Service can access both VCIN and NSOR, where the change in registration will be entered, so there is no need for the registering agency or the state to directly notify the U.S. Marshals Service. California requests clarification of this requirement.

Verification/Appearance Requirements

The Guidelines state that the update requirement applies to every registering agency, meaning that if the registrant is registered in three different jurisdictions where he resides, is employed, and is a student, and he was a Tier III offender, he would have to update every three months at each agency. (Guidelines at p. 59.) California understands this to apply only when the three registering jurisdictions are three separate states–not three local jurisdictions within California. Is this correct? California currently requires that all updates be done at the agency which has jurisdiction over the residence, except for changes in student/campus registration status. A registration change pertaining to school attendance status is done at the agency having jurisdiction over the campus. When registration is only in local jurisdictions within California, all the agencies will be able to see the updated changes made by the other registering agencies in both VCIN and the law enforcement intranet web site. California further understands that if the registrant is registered in other states, that electronic notification directly to other registering agencies of any change in California registration information is required (Guidelines at p. 60)–is this correct?

It is possible that the myriad of new requirements being imposed on registrants via SORNA may ultimately cause the courts to change their position on whether sex offender registration constitutes punishment for purposes of the Constitution. In particular, due process challenges will become more prevalent and may well be successful, if it appears that compliance with such a detailed law is impossible or the burden too onerous. The burden imposed upon the registrant who is required to update his registration every three or six months at each of several registering agencies, as well as to immediately update other information which changes in the interim immediately, is not inconsequential and may have adverse consequences when the law is reviewed in the courts.

Duration of Registration

SORNA sets minimums for duration of registration for each tier. (Guidelines at p. 62.) California has lifetime registration, so this is not an issue as to most registrants. However, there is a group of California registrants who are relieved after 10 years if they obtain a certificate of rehabilitation. The statute can be amended to require the longer registration duration for those affected in that group, but California has a question about retroactive application. If a person has already been relieved of the duty to register by obtaining a certificate of rehabilitation, does SORNA require that if they come back into the criminal justice system that they be notified of a renewed duty to register?

Additionally, the proposed Guidelines state that in order for a registrant to obtain a reduced duration of registration, he must demonstrate a clean record. (Guidelines at pp. 62-63.) One requirement is that the person successfully completed an appropriate sex offender treatment program. California does not provide sex offender treatment for all its registrants. There is treatment for some high risk offenders and, occasionally, certain other sex offenders, including juveniles. It is likely that many registrants will meet all the criteria for a clean record except the one for treatment, because they were not offered treatment in California. Would this preclude a reduction in the duration of registration period for those offenders?

Enforcement of Registration Requirements

The California public Megan's Law Internet web site currently places a large check mark by the offender's name, when appropriate, to indicate he is not in compliance with the registration law. This means he either has absconded or is late in registering or re-registering. The Guidelines indicate that the web site must show when a registrant has absconded. (Guidelines at p. 65.) Is this requirement met by the current system? If not, VCIN will have to be enhanced by a software modification, which cannot be completed until July 2010. California does not believe that any process regarding an absconding offender should commence until it is in fact verified by local law enforcement that a registrant has absconded–not that he "may" have absconded.

The Guidelines state that a warrant must be sought for the arrest of a registrant who has absconded. (Guidelines at p. 65.) Does this apply to registrants whose violation of the registration law is a misdemeanor, as well as to those whose violation is a felony?

Would it suffice to enter the fact that an offender has absconded into California's sex offender registration database (VCIN) as well as on the law enforcement intranet web site, rather than transmitting a direct e-mail notification by the state or local registering agency to the U.S. Marshals Service?

The Guidelines indicate that if an offender fails to register on time, or complete a required update of registration, including registration at his place of employment or school attendance, the law enforcement agency with appropriate jurisdiction must be notified. (Guidelines at p. 66.) Does entry of the violation into the sex offender registration database and law enforcement intranet web site constitute notice, or is direct notice via e-mail or other electronic notification required?

If direct notification is required, an enhancement to VCIN may be necessary to deliver such notice automatically to the registering agency, which change cannot be completed until July 2010.

Conclusion

The proposed Guidelines create a myriad of notification requirements, most of which should be satisfied by the state's entry in its central sex offender registration database, open to federal, state and local law enforcement agencies, of all registration information about registrants. Instead, the federal law appears to require direct e-mail notifications in many situations, which is a serious resource and workload issue. Further, the Guidelines create so many new requirements for registrants that it may well be increasing the chances of successful due process challenges to the new federal law. Finally, unless the registration requirements for juveniles can be modified regarding required Internet display of juvenile sex offenders and duration of registration for low risk juvenile offenders (as determined by a court), there may be issues regarding the appropriateness of adopting of SORNA.

Rosengarten, Clark

From: Rogers, Laura
Sent: Wednesday, August 01, 2007 8:17 PM
To: Rosengarten, Clark
ıbject: Fw: NYS comments on AWA Guidelines

Attachments: NYS comments AWA Guidelines.pdf

Clark,
More comments.
Thanks

----- Original Message -----
From: Martland, Luke (DCJS) <Luke.Martland@dcjs.state.ny.us>
To: Rogers, Laura
Sent: Wed Aug 01 14:35:07 2007
Subject: NYS comments on AWA Guidelines

NYS comments
WA Guidelines.pd..

Dear Dir ctor Rogers;

Attached please find the comments submitted by New York State as to the Adam Walsh Act proposed Guidelines. Please call me at the number below if you have any questions, or if there are any problems with the attachment. I have also forwarded you a paper copy of this letter.

Sincerely,
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ector, Office of Sex Offender Management New York State Division of Criminal Justice ervices
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July 31, 2007

Ms. Laura L. Rogers
Director
SMART Office
Office of Justice Programs
U.S. Department of Justice
810 Seventh Street, NW
Washington, DC 20531

Dear Director Rogers:

Thank you for the opportunity to comment on the proposed Guidelines on the Adam Walsh Act. In preparing the comments set forth below, advice was solicited from a number of State agencies that regularly deal with issues affecting sex offenders, including the Division of Criminal Justice Services, the Division of Probation and Correctional Alternatives, the Office of Mental Health, the Department of Correctional Services, the Division of Parole, the Office of Children and Family Services, and the Board of Examiners of Sex Offenders.

I. Retroactivity

The current guidelines provide that a state will have substantially complied with the Sex Offender Registration and Notification Act (SORNA) standards when it registers three categories of sex offenders who were convicted prior to the state's implementation of those standards: (1) those who are incarcerated or under supervision, either for the predicate sex offense or for some other crime; (2) those who are already registered or subject to a pre-existing sex offender registration requirement under the jurisdiction's law; or (3) those who thereafter re-enter the state's criminal justice system because of a conviction for some other crime (whether or not it is a sex offense).

This provision of the guidelines should be amended to allow states greater flexibility in determining the retroactive applicability of the SORNA standards. When each state first created its sex offender registry, it made a choice about how the registration requirements would be applied to previously convicted offenders. In some states, like New York, eligible offenders would be required to register if they were then in custody or on parole or probation. See, e.g., Ark. Code Ann. § 12-12-905; 11 Del. Code § 4121(a)(4); Mich. Comp. Laws Ann. § 28-723. Other states required all previously convicted sex offenders to register even if they were no longer in custody or under supervision at the time the registry became effective. See, e.g., Alaska Stat. § 12.63.100(5); Ca. Penal Code § 290.

The decision on retroactive applicability raises substantial practical and policy concerns that are more appropriately addressed by the individual states. The first and third guideline

categories will greatly expand the pool of registerable sex offenders in New York State. It will also require the State to search the prior criminal history of each person entering the criminal justice system to determine whether, at any time in the past, he or she was convicted of, or adjudicated for, a qualifying sex offense. This is both burdensome and unworkable because in many cases older records will no longer be available, or they will be incomplete or inaccurate. Some juvenile delinquency and youthful offender records will have been sealed or expunged. See N.Y. Fam. Court Act §§ 375.2, 375.3 (juvenile delinquency records); N.Y. Criminal Procedure Law § 720.35(2) (youthful offender records). This is consistent with New York's long standing policy that recognizes that young offenders have a strong potential for rehabilitation, and can be more effectively redirected into becoming productive citizens if they are not stigmatized as criminals or registered sex offenders.

Moreover, the expansion of the pool of registerable sex offenders will only exacerbate the difficulties that states are now facing in finding appropriate housing for sex offenders. In New York and in some other states, there are state or local restrictions that bar registered sex offenders from living in certain areas. See Joseph L. Lester, Off to Elba! The Legitimacy of Sex Offender Registration and Employment Restrictions, 40 Akron L. Rev. 339, 351-352 (2007) ("Nineteen states and many other local communities have enacted residence restrictions on former sex offenders, prohibiting them from living a certain distance away from schools, child-care facilities, public swimming pools, public playgrounds, churches, or any area where minors congregate, ..."). Even apart from such legal restrictions, placement of offenders is often made more difficult by community opposition. As a result, there is already a shortage of housing for the existing pool of sex offenders, which in New York consists of those who have committed a sex offense more recently. Any extension of the registration requirements to those who have committed sex crimes in the distant past will exacerbate this housing shortage. In addition, it may have the unintended consequence of undermining public safety by forcing offenders to become homeless or to go underground, thus making it difficult to track their whereabouts.

Finally, we have grave concerns that the retroactive expansion of the registration obligations to juvenile delinquents and youthful offenders will likely be constitutionally challenged under the ex post facto clause of the federal constitution, and/or various provisions of the State constitution. Past judicial decisions have upheld these requirements for adult sex offenders. However, for youths who are already under supervision following a non-criminal adjudication – entered without all of the procedural safeguards attending a criminal conviction (see, e.g., N.Y. Family Court Act § 342.2) – the lengthy period of registration, the onerous reporting requirements and the upsetting of sealing and expungement provisions leading to public disclosure of their acts and of other personal information about them would be cited in serious court challenges to a state statute compliant with the currently proposed guidelines.

II. Substantial compliance

SORNA vests the Attorney General with the authority to determine whether states have passed legislation that "substantially implement[s]" the Act. According to the guidelines, the SMART Office will make a case-by-case determination whether deviations from a requirement of SORNA or the guidelines "will or will not substantially disserve the objectives of the requirement." The guidelines also recognize that states will have "some latitude" in meeting SORNA's "substantial" compliance standard, but the examples that are given of potentially acceptable deviations from the SORNA requirements concern relatively minor administerial deviations. This definition of "substantial" compliance should be broadened to allow states

greater latitude in deviating from SORNA, in particular with respect to the decision whether or not to require registration of juvenile delinquents.

SORNA requires states to register all juveniles over the age of 14 who are found to have committed a qualifying sex offense, and to include information about them and their offenses on the state's publicly available website. For many states, including New York, this will require a substantial change in the treatment of juvenile delinquents.

New York and almost half of the other states do not require registration of juvenile delinquents. To the contrary, juvenile delinquency records are explicitly protected from public disclosure by laws requiring that these records be kept confidential and/or that they be sealed or expunged. See N.Y. Family Court Act §§ 375.2, 375.3, 380.1, 381.2; N.Y. Criminal Procedure Law § 720.35. Shielding these juvenile delinquents from public scrutiny recognizes that adolescents do not appreciate the consequences of their actions in the same manner as adults, and that stigmatizing them as criminals will undermine their ability to redirect their lives, through education and employment, into becoming fully functioning, law-abiding adults. Branding such youths as sex offenders – through registration requirements and public posting of their identities on the Internet – would be a paradigmatic shift in the state's treatment of such offenders. And, in combination with the residency restrictions discussed above, it could prevent juveniles from reuniting with their families or reintegrating into their communities.

By the same token, New York also has a unique law that allows fourteen and fifteen year old offenders who commit certain serious, sexually violent acts to be prosecuted as adults.[1] If convicted, these "juvenile offenders" will receive sentences of imprisonment that eventually will require their transfer to the adult correctional system, and require them to register as sex offenders. See N.Y. Criminal Procedure Law § 1.20(42); N.Y. Penal Law § 30.00(2); N.Y. Correction Law § 168-a(1). While this juvenile offender option already requires registration of those youths who commit the most serious sex offenses, it will not require that all juveniles over the age of fourteen who commit qualifying sex offenses to register because persons adjudicated to be juvenile delinquents, instead of being prosecuted as adults, are not subject to registration requirements.

The guideline definition of "substantial compliance" should be broadened to allow states to make these types of policy choices with respect to juvenile registration. Indeed, because such a large number of states have recognized that youths may be better served by such non-disclosure, the guidelines should be amended to recognize that a state may substantially comply with SORNA, even if it chooses not to register juvenile delinquents whose cases have been adjudicated in a Family Court rather than the criminal courts.

Additional flexibility should be written into the substantial compliance definition to permit states to maintain a risk-based, rather than a strict offense-based, tier system. In New York, most criminal charges are resolved by plea negotiations, which typically will include bargaining for the particular offense to which the defendant will plead guilty. If the offense of conviction is the only determinant of which tier will control an offender's registration obligations, it is anticipated that defendants will be less likely to agree to plead guilty to more serious sex offenses. In a case with a vulnerable victim, which a prosecutor will often be reluctant to bring to trial, this could result in

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[1] In addition, the age of criminal responsibility in New York is sixteen. N.Y. Penal Law § 30.00(1). As a result, New York already routinely registers sixteen and seventeen year old sex offenders.

the prosecutor agreeing to allow the defendant to plead to a low-level sex offense, and there would be no opportunity to have the offender's registration obligation turn on the seriousness of his or her actual conduct. This would be an unfortunate and unintended consequence of a strict offense-based tier system. An expanded definition of "substantial compliance" would, however, allow states the flexibility to accommodate those features of their own criminal justice systems that, while serving the purposes of SORNA, require different procedural and policy choices.

Finally, to the extent that the goal is to encourage all states to adopt SORNA in order to facilitate the creation of a more uniform federal registry, it seems likely that a rigid and inflexible definition of substantial compliance that requires states to deviate from long-standing procedural and policy choices will create disincentives for states to do so, especially when coupled with what appear to be the extraordinary administrative and resource burdens created by SORNA. Giving states more leeway in these areas will, by contrast, encourage them to pass legislation that will serve the public safety objectives of SORNA, while still respecting and accommodating their own state policies and procedures.

Once again, we appreciate the opportunity to comment on the proposed Guidelines on the Adam Walsh Act. Although we strongly support sex offender registration, and doing everything possible to protect our families and communities from sexual crimes, we have substantial concerns about some aspects of the Adam Walsh Act. We hope that our concerns will be given serious consideration, and that the final version of the Guidelines will address the issues discussed above.

Sincerely,

Denise O'Donnell
Commissioner
NYS Division of Criminal Justice Services

George B. Alexander
Chairman and Chief Executive Officer
NYS Division of Parole

Gladys Carrión
Commissioner
NYS Office of Children & Family Services

Brian Fisher
Commissioner
NYS Department of Correctional Services

Robert Maccarone
State Director
NYS Division of Parole and Correctional Alternatives

Beth Devane
Chair
NYS Board of Examiners of Sex Offenders

Rosengarten, Clark

From: Rogers, Laura on behalf of GetSMART
Sent: Monday, August 06, 2007 10:49 AM
To: Rosengarten, Clark
Subject: FW: Hawaii's Response to SORNA
Attachments: Response to SORNA.doc

From: Norma Ueno [mailto:nueno@hcjdc.hawaii.gov]
Sent: Tuesday, July 31, 2007 10:03 PM
To: GetSMART
Cc: Liane Moriyama; Laureen Uwaine
Subject: Hawaii's Response to SORNA

I have attached Hawaii's response to SORNA and the guidelines. If you have any questions, our contact is our Administrator, Ms. Liane Moriyama. Her contact information is included in our response document.

Thank you!

Norma Y. Ueno
CHRC Unit Supervisor
Hawaii Criminal Justice Data Center
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STATE OF HAWAII RESPONSE TO THE NATIONAL SEX OFFENDER REGISTRATION AND NOTIFICATION ACT (SORNA) 2006

Contact: *Liane M. Moriyama, Administrator, Hawaii Criminal Justice Data Center*
(808) 587-3110
lmoriyam@hcjdc.hawaii.gov

FUNDING

Implementing all the requirements of SORNA will require additional funding and resources beyond the Byrne grant allocation. Are there plans for additional funding through the SMART Office?

OUT-OF-STATE SEX OFFENDERS

Can the guidelines help to address the need for court documents when sex offenders move to another state? The receiving state must request court documents from the state that the sex offender was convicted in order to qualify them to register in the receiving state. Would the SMART Office consider creating a "warehouse" to store digitized court documents that could be accessed by the states? Nationally, there should be a rule that once a sex offender is registered in one state, they must register in any state that they move to without the need for court documents.

SECTION-BY-SECTION COMMENTS:

§111 Relevant Definitions: Does SORNA include offenders who have been acquitted/found not guilty by reason of insanity or found unfit to proceed? If not, shouldn't these categories of offenders be included?

§111(5)(B) Foreign Convictions: Who will be notifying the state when a person convicted of a foreign offense enters their state? How will the state obtain the proper documents to place the offender in the correct tier? Will the SMART office establish procedures with the Department of State? ICE/Customs? Who will be determining which additional countries meet the standards for fairness and due process, and how will the states be notified that a country meets those standards?

§111(8) Convicted as Including Certain Juvenile Adjudications: This will require legislative change in the majority of states and may be an area of "contention". Would it be reasonable to look into alternatives for this requirement, such as registration but no

public dissemination, especially since the juvenile offenders would remain on the registry until the time limit on their tier classification is reached.

§113 (c) Registry Requirements for Sex Offenders: This requires the offender to appear in-person to update any registration information. Is there any restriction on where the offender must do this? Can we assume that it can be at an agency other than the registry? Also, with the new required fields, will the offenders be able to initially update their information by mail as a means to help the states deal with the resources that will be needed up front to meet this requirement?

§113(c) Registry Requirements for Sex Offenders: Changes in name, residence, employment or student status must be made in person. The Guidelines describe an additional implementation measure that requires the sex offender to also report changes in vehicle information, lodging of seven days or more duration and Internet designations. We understand that Internet identifiers do not need to be updated in person, but could be updated via the Web. Will there be further guidance on how these updates should be made?

§113(d) Registry Requirements for Sex Offenders: If an offender is convicted of a sexual offense in one state, but is incarcerated in another state (it could be for the sexual offense or for another offense), is the state that has custody of the offender required to register the offender before he is released?

§113(e) State Penalty for Failure to Comply: §846E, Hawaii Revised Statutes, establishes that an intentional or knowing violation is a class C felony which would subject the offender to a maximum term of imprisonment of five years. A reckless violation is a misdemeanor that would subject the offender to a maximum term of imprisonment of one year. Do these offenses meet the SORNA requirement?

§114(a)(7) Travel & Immigration Documents: SORNA requires the registry to maintain a digitized copy of the offender's passport or immigration documents and critical information from those documents. Besides the digitized copy, what other information is required? Will the SMART Office be coordinating access on behalf of all states to the databases of the agencies issuing passports and immigration documents?

§114(b)(2) Text of Provision of Law Defining the Criminal Offense: Can this requirement be met by providing a link? We understand that the SMART Office will be creating a "warehouse" with the text of the states' offenses, including historical statutes that the states would be able to access and download to their registries. Would this apply to military/federal offenses as well?

§114(b)(3) Criminal History and Other Criminal Justice Information: We understand that this requirement can be met for offenders registering in the same state that they were convicted in by providing a link to the state's criminal history information system. How would this be accomplished for offenders who have been convicted of charges in another state, or at the federal/military levels? Would the FBI allow the states to provide

the national criminal history record for multi-state offenders at no charge? Is there any requirement for the states to post public criminal history record information, or at least the qualifying conviction, for the public?

§114(b)(5) Fingerprints and Palm prints: Can this requirement be met by noting on the record that the fingerprints/palm prints are already captured and available in the state's AFIS without directly linking to this system/database?

§114(b)(6) DNA Sample: Can this requirement be met by noting on the record that this information is contained in the state CODIS database?

§114(b)(7) Driver's License or Identification: Can this requirement be met by providing a link to the state DL/ID system?

§116 Periodic in Person Verification: Are incarcerated, committed or administratively detained offenders exempt from this requirement?

§121 Megan Nicole Kanka and Alexandra Nicole Zapp Community Notification Program: Does the notification program require the state to notify the listed agencies, (b)(1) through (b)(7), about any offender who registers or updates his information, or can the listed agencies specify a geographical area and be notified only when an offender in that area registers or updates his information?

§123 Development and Availability of Registry Management and Website Software: Is the software going to be delivered in phases? Is the first target date still 12/2007 and what applications will be available in the first release? What type of technical support will be available for the software? Who will be providing the support? Also will the states be involved in the requirements, development, testing or piloting?

§142 Federal Assistance with Respect to Violations of Registration Requirements: What is the role of the federal law enforcement agencies? Is there a national direction as to exactly what the U.S. Marshal's Office (and other federal agencies) role will be or is it up to each local office as to the role it will play in the state? In particular it seems that the US Marshal's Office is very active in some states and not so in other states. Will the SMART Office serve as the liaison between the states and the federal law enforcement agencies, or will it be up to each state to deal with its local offices? What is the role of the National Center for Missing and Exploited Children (NCMEC) in this area? Is it to only provide training?

Miscellaneous: If a registered sex offender does not have an FBI number, will it be possible for the state to submit the fingerprints taken at the time of registration to the FBI so that an FBI number can be assigned to the offender and the record submitted to NSOR? Currently, without the FBI #, an NSOR entry cannot be completed, although we understand that this policy will be changed soon.

Rogers, Laura

public registry

From: Florence Rogers [redacted]
Sent: Tuesday, July 31, 2007 11:40 PM
To: GetSMART
Subject: Registry Guidelines

Dear DOJ;

I have been reading about the proposed minimums for listing felons on the sex offender registry and I wanted to make some comments.

First, if a registry is going to be useful it needs to be restricted to people known to be a danger to minors. If a person's crime does not involve any interaction with a minor then that person is not known to be a danger. If they have not at least e-mailed a minor as was the recent case with the Senator and the Capitol Pages then I oppose putting that person on the registry.

A law enforcement officer in Atlanta has stated that putting unnecessary people on the registry keeps his office from being able to concentrate remorses on keeping close tract of dangerous people.

Keeping children as safe as possible is always going to require vigilance. The adults responsible must keep open lines of communication so that they know of any dangers as they arise. They should also teach children how to respond so that they can protect themselves as much as possible. It is not necessary to scare children with horror stories to do this. They need to be told they can say no to adults, that it is appropriate to scream is someone is scaring them and that they have a right to their bodies and no one other than parents and medical professionals have a right to touch them if they do not want to be touched. There is no way to list offenders before their first offense, so safe practices are necessary.

I believe that limiting the time a person is on the registry is helpful to them in trying to live a normal and stable life. At least they will not have to keep moving to comply with ever changing restrictions. But it should be remembered that once something is on the Internet it is never really gone, so in that sense everyone ever listed is listed for life.

Sincerely,
Florence S. Rogers